LE PROTECTEUR DU CITOYEN

Québec Ombudsman

Assemblée nationale

Québec

ANNUAL REPORT

GOING THE EXTRA MILE

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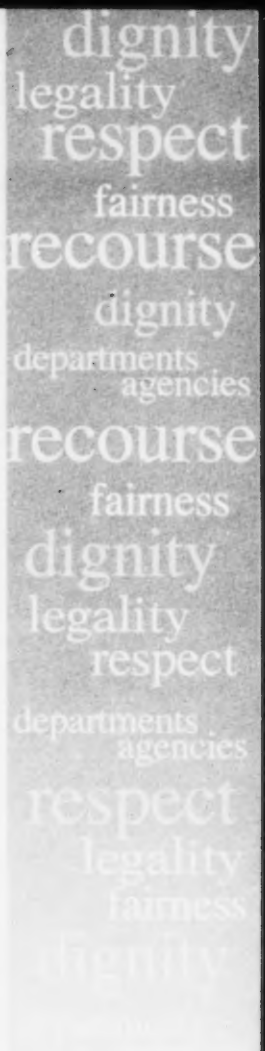
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The masculine form is used in this text to designate both men and women.

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LE PROTECTEUR DU CITOYEN
Québec Ombudsman
Assemblée nationale
Québec

Québec, November 2003

Mr. Michel Bissonnet
President
Québec National Assembly
Parliament Building
Québec, Quebec G1A 1A4

Dear Mr. Bissonnet,

I am honoured to be forwarding to you a copy of the Québec Ombudsman's 33rd Annual Report for the period of April 1, 2002 to March 31, 2003, which I have entitled "Going the extra mile".

Last year, I stressed the importance of leaving room for flexibility when applying current regulations and standards to cases with exceptional circumstances. This year, I would like to highlight the importance of occasionally going the extra mile in order to meet every citizen's expectations effectively. It is the quality of public services which is at stake.

Yours sincerely,

Québec Ombudsman,

Pauline Champoux-Lesage

Pauline Champoux-Lesage

LE PROTECTEUR DU CITOYEN

Québec Ombudsman

Assemblée nationale

Québec

The current logo of the Québec Ombudsman is a variation on the classic scales of justice, which symbolize the search for balance between competing rights. Normally, the scales represent justice as rendered by the courts and administrative tribunals.

The Québec Ombudsman's office is a nonjudicial conflict resolution mechanism that is generally more accessible than the courts. Not only must the Québec Ombudsman's decisions comply with the law, they must also be equitable. Equity is the ultimate level of justice.

On one level, then, the logo symbolizes the desire for justice represented by one of the pans of the scale. At another, the "P" replacing the other pan symbolizes the *Protecteur du citoyen*, the French term for Ombudsman. The "P" also refers to the highest level (*palier*) of justice-equity. Equity means applying the law with a human face.

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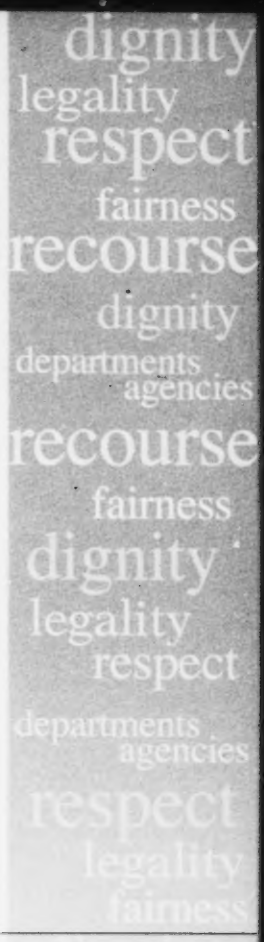

1

Thoughts and comments and reflections of the Québec Ombudsman

THOUGHTS AND COMMENTS AND REFLECTIONS OF THE QUÉBEC OMBUDSMAN

Going the extra mile

As expressed in the annual report last year, I stressed the importance of occasionally leaving room for flexibility in applying current administering methods and guidelines in order to better meet the objectives of a law, policy or program. I also stressed the fact that we must in special cases, adapt or even override certain rules to insure that justice and equity prevail. As the title of last year's report summarizes, certain circumstances demand that we go "above and beyond the law" to protect the spirit and ultimate goal of the law.

The same applies for the manner in which we serve citizens.

Any public servant who genuinely wishes to fulfill his or her role with professionalism cannot be satisfied with merely mechanically processing the requests made of them. He or she must consider the person behind the case file and be prepared to offer support and assistance to the citizen. Listening attentively to truly understand what the person is asking, asking pointed questions to fully grasp the citizen's situation and never hesitating to provide the citizen with all necessary explanations to assure their full comprehension: this is what I mean by "going the extra mile."

Civil servants know all that a program has to offer. It is their responsibility to share this information without reserve to anyone seeking their counsel. How many times have we heard people say, "How is it that no one ever told me about this?"

In the Déclaration de valeurs, prepared by the Secrétariat du Conseil du trésor to guide the actions of the Public Administration, under the heading of professionalism it reminds members that "they are responsible for their decisions and actions as well as the judicious use of the resources and information available."

There exists an implicit obligation to explain all possibilities available, outline the different aspects of a program and provide information regarding all the necessary formalities and deadlines to be met, if applicable.

It also implies the obligation to analyze the citizen's case file carefully, follow it through the various administrative processes, and ensure it is finalized to ensure that everyone receives fair and thorough treatment. Finally, the citizen must also be informed of all recourses at his or her disposal.

Going the extra mile makes all the difference; it demonstrates the respect with which we regard all men and women and elicits gratitude. A 1998 study entitled "Les citoyens d'abord" (Citizens First) by the Canadian Centre for Management Development identified the five elements that "drive" the quality of services which influenced citizens' opinion the most. Among these, "going the extra mile".

I believe it appropriate to use a few examples to further describe what is intended by "going the extra mile" by referring to actual situations which have required the intervention of the Québec Ombudsman in 2002-2003.

Particular attention must be paid to the transfer of information between the different branches of a single government department or agency to prevent citizens from falling victim to "short-circuits" through the administrative authorities' internal communications. Take the example of the citizen subject to the jurisdiction of the Public Curator. An advisor refused to amend his budget since that responsibility was the duty of another unit[1]. What of this other citizen who was refused a review of his file by the Société de l'assurance automobile du Québec even though it had all the required documents to issue compensation[2].

It is equally important to make special efforts to adapt the services provided for people suffering from a psychological problem which is caused or exacerbated by the situation at hand, as in the case of a citizen whose levels of anxiety and panic were so high that she was unable of meeting the reasonable requirements of the Ministère de l'Emploi et de la Solidarité[3].

"Going the extra mile" also implies a thorough examination of a case file to be able to detect oversights or to realize that certain facts are worthy of further investigation. Such was the case of a citizen who was refused compensation from the Commission de la santé et de la sécurité du travail simply because a doctor neglected to fill in the section regarding the citizen's functional limitations – limits which were rather obvious upon reading the rest of the report[4].

1. Bank charges throw modest budget out of balance.
2. Evaluation reports disregarded.
3. A case of psychological distress.
4. Overlooking the obvious . . .

It was equally necessary to get to bottom of things in the case of an ex-student whose file was inscribed with a fictional and unverified date of completion of studies, provoking the refusal of the Ministère de l'Éducation to write off his debt even though he had been released from bankruptcy[5].

"Going the extra mile" means ensuring that current administrative practices do not violate the rights of citizens[6] and that requirements remain reasonable and feasible[7].

Lastly, "going the extra mile" becomes the demanding, daily challenge to provide citizens with precise, complete, accessible and comprehensible information[8].

Going that extra mile means treating citizens with care, sensitivity and understanding, thereby maintaining a public service that is appreciated by the public and that provides fair and equitable treatment for all.

A constant concern: transparency

Another measure of satisfaction identified in the "Citizens First" study (1998) is the quality of the information given. Not only is it an essential part of good service, it is just as relevant from the wider perspective of transparency of the State which is vital in my view.

Among the values that must guide government in a democracy, I place great importance on what is commonly known as transparency, which is what allows policies, programs, procedures, as well as the principles and rationale guiding the actions of the State and its administration, to be "seen and known by all". One of the essential conditions of such transparency is the accountability of public services regarding their spending of public funds, in other words, to account for their administrative management as clearly as possible.

The importance I place on the preparation and distribution of my annual report, as well as in my administrative management reports reflects the importance I attach to accountability.

5. Three days too many.
6. Being careful not to create a new tax liability when loans from the Ministère de l'Emploi et de la Solidarité are reimbursed.
7. Requirements too strict to retrieve one's vehicle – Société de l'assurance automobile du Québec.
8. Incomplete information; information considered unreliable: Ministère du Revenu. Processing some case files under exemption: Ministère de l'Education.

First and foremost, transparency is necessary for citizens to be able to act in accordance with the very definition of citizenship: participating in debates and electing officials who represent, in the best way possible, one's social values and vision of government. The various political parties certainly play a primary role in this respect, but it is also up to the State to supply basic information that is factual, neutral and objective concerning issues of great importance. Transparency is equally crucial when it comes to informing citizens about the services available to them and to what extent, as well as rules that must be respected. Finally, transparency is essential for the exercise of yet another fundamental democratic right: the right to react and be heard with respect to the content of proposed public policies.

With this in mind, I would like to make a few brief comments about government actions that relate, either directly or indirectly, to this topic. Some issues discussed here will be further explored in later sections of the report.

It is with mixed feelings that I read the parliamentary bill concerning transparency and lobbying ethics. I am delighted that, following the example of the Canadian and American federal governments and of several Canadian provinces and American states, Québec has implemented legislation allowing citizens to know who is rightfully influencing government policy, and by what means. On the other hand, I regret that the guidelines for transparency are not the same for everyone. Many groups are excluded from the definition of lobbyist, and among those who lobby, not everyone is governed by the same rules. In my opinion, the rationale must be taken to its logical conclusion by ensuring equal treatment for all.

Transparency also means respecting a citizen's right to know the intentions of their leaders regarding particular issues and to be heard by them on the subject. It is for this reason that I intervened, unfortunately to no avail, when the Minister de l'Environnement presented Bill 103 "Loi portant restrictions relatives à l'élevage de porcs" [Act to impose restrictions on pig farming]. The very act of submitting a bill to the legislator for approval which would entail retroactive consequences and whose content was unknown and part of a study prepared behind closed doors, constituted a serious breach of the rights and privileges of the representatives. Moreover, by not complying with the deadlines customarily enforced to give citizens a

chance to look into the regulatory rules and express their views, the rights of these citizens were violated. The section of this report on the Ministère de l'Environnement will expound further on this unfortunate event.

Transparency also means citizens right to access comprehensive information about when and how to join a program or how to access a service. Administrative authorities must inform everyone concerned about a new program or policy in effect.

To this end, I had to be quite persistent with the Ministère de l'Enfance et de la Famille before clear and explicit information was provided to parents about the daycare program and in particular information concerning alternative measures when no daycare space was available.

With regards to the disclosure of public spending as an essential aspect of transparency, like the Auditor General, I deeply regret that government-created non-profit organizations (NPO) with a mandate to award subsidies amounting to hundreds of millions of dollars in its name, should be immune from the Auditor's regular mandate, in addition to being excused from the obligation of reporting to the National Assembly.

Not having addressed the topic as such until now, I would like to touch on a phenomenon that is not new but that appears to be gaining in popularity. I am referring to what is called "législation par contrat" [contractual legislation], which are agreements with force of law between government authorities and private parties concerning the contents or implementation of standards. Without denying the need or legitimacy of such proceedings, I have misgivings about the secret nature of some of these agreements. If they are not "seen and known by all", they may compromise the right of citizens to be informed and heard on important issues of public interest.

Transparency is one of the pillars of democracy and a basic condition to the full exercise of citizenship.

Comments relating to requests for intervention

There has been a reduction in the number of requests for intervention in 2002-2003 compared to the previous year. 21,763 requests were submitted this fiscal year, whereas 25,249 were received in 2001-2002, a 13.8% reduction. With the exception of a few cases, this reduction is apparent in all sectors under the institution's jurisdiction.

I have investigated the possible reasons for this new trend.

Consultation with my colleagues revealed that similar reductions occurred in most ombudsman offices across Canada. Presuming that the same causes are likely to produce the same effects, it is therefore reasonable to look for similarities between what occurred in Quebec and what occurred in other provinces.

In my opinion, the primary cause for this reduction is the economic upturn. Over the past few years, economic growth was maintained across Canada. As a result, people have had less need for assistance or government intervention. The various administrative authorities can therefore more easily maintain or even improve the quality of their services.

On that issue, a relevant study was conducted in January 2003 on citizen satisfaction with regards to federal, provincial, and municipal public services by Erin Research Inc. on behalf of the Institute for Citizen-Centred Service and the Institute of Public Administration of Canada. Among various other interesting findings is this conclusion: "The results are in and they are encouraging – scores on service quality ratings for the public sector in Canada have improved progressively since 1998. This improvement was detected by the two principal measures in the study "Citizens First": service quality reputation (overall rating for government services) and service experience (evaluation of each service studied)"[9].

Secondly, I would like to highlight the fact that the Ombudsman institution has devoted much energy over the last few years to encourage government departments and agencies to establish internal complaint processing mechanisms that are efficient, flexible and quick. The Québec Ombudsman offered his support and expertise for the establishment of this much-needed

9. Institute for Citizen-Centred Services, Institute of Public Administration of Canada, Erin Research Inc.: "Citizens First", January 3, 2003, pg. 83.

procedural mechanism. Today, the majority of government departments and agencies are so equipped. During conversations with my colleagues, I ascertained that other Canadian ombudsmen have made similar efforts. When such procedures function properly, the citizens' last recourse, the ombudsman, is less frequently called upon, automatically reducing the number of requests for intervention.

As for the number of substantiated complaints versus the number of completed, fully-investigated cases, the total dropped from 1,779 to 1,435, a reduction of 29.8% to 27%. Though this 2.8% drop is good news, I don't believe that it is yet a sign of a long-term trend. Moreover, if we consider the proportion of legitimate complaints reported over the past four years, we can surmise a relative stability in this regard, with such complaints representing 28.3% of completed investigations in 2000-2001 and 29.4% in 1999-2000. We must therefore wait before we can determine whether the reduction for 2002-2003 has any real significance or whether it is simply a passing trend.

Though the present figures are optimistic, I must, however, note that the volume of requests for intervention from the Québec Ombudsman remains high and there is still much to accomplish. In no way does this mean that we may rest on our laurels. In this matter, as in others, we must strive to "go the extra mile."

2

The Québec Ombudsman's mission

THE QUÉBEC OMBUDSMAN'S MISSION

The Québec Ombudsman has been entrusted by Law the function of "watchdog" of Quebec's administrative authorities. It will intervene whenever has reason to believe that a person or a group of people has or could be adversely affected. It is responsible for receiving complaints concerning administrative authorities. If necessary, it intervenes with government departments and agencies to rectify a prejudicial situation and ensure that the situation will not reoccur. With the goal of preventing injury, the Québec Ombudsman issues recommendations aimed at eliminating sources of potential problems and consequently ensures the protection of the rights of citizenry and corrects dysfunctions in the public administration, thereby contributing to strengthening democracy and the constitutional state.

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3

Some Québec Ombudsman's interventions in 2002-2003

The cases described in this report were selected to demonstrate the wide variety of cases investigated by the Québec Ombudsman and the impact of its interventions.

3.1

Ministries

3.1.1

The Ministère de l'Agriculture, des Pêcheries et de l'Alimentation

The Société de la faune et des parcs du Québec

The applied fish weight standard posed a weighty problem

Management of commercial fisheries in Québec involves the ministère de l'Agriculture, des Pêcheries et de l'Alimentation (MAPAQ) and the Société de la faune et des parcs du Québec (FAPAQ). The MAPAQ issues the permits, some of which include certain conditions of use proposed by the fisheries administrator, FAPAQ, and covered in the yearly "Plan de pêche" [Fisheries Management Plan] approved by the government.

The Administration sets a double quota restriction: a catch limit and weight limit.

Black sturgeon fishing in the St. Lawrence river is conducted in several zones. Beginning in 1997, FAPAQ proposed individual fishing quotas to sustain resources. Henceforth, every black sturgeon fisherman had a catch limit based on his or her preceding annual statements.

For the 2001 season however, the FAPAQ imposed a global maximum catch limit of 15,000 kg for only one of the zones, in addition to the individual quotas. From then on, permits included a new condition of use, particular to this one zone, stating that the fishing season would be open as usual from May 15 to August 15, but for one crucial exception stating that if the global quota of 15,000 kg for that zone was attained prior to August 15, the season could close at that time. This is exactly what happened. An order from the Director of the Protection de la Faune put an end to the fishing season on July 17, 2001, as the global contingent had already been reached in that zone.

A fisherman filed a complaint with the Québec Ombudsman saying that he had not even begun to fish when the season closed. What happened was that those fishermen who took to the sea first at the very start of the season, filled the entire 15,000 kg quota. The others, including the fisherman who filed the complaint, found themselves wanting.

Consequently, some fishermen cannot exercise their right to fish.

Significant estimation errors.

Since the same procedure was planned for the 2002 season, the Québec Ombudsman decided to investigate the issue. This investigation revealed that the total of individual quotas, which was calculated using a complex yet relatively precise formula taking into account the average weight of the fish and other parameters, greatly exceeded the number of catches allowed to reach the global limit of 15,000 kg. In theory, the total number of 1,488 fish authorized should correspond fairly closely to a total weight of 15,000 kg. It is therefore reasonable to believe that, for the purposes of individual quota limits, the average weight of a sturgeon was estimated to be 10 kg. Yet this was not the case since, in truth, the season closed after only 843 sturgeons were caught. Therefore, it appears that the average weight of the sturgeons caught was closer to 18 kg, which translates into a discrepancy of more than 43% from the estimated amounts! The Québec Ombudsman was surprised and perplexed to see such a serious error in calculation.

Errors which resulted in revenue losses for some fishermen.

In any event, while it complied with the rules and standards of fisheries management, such a large discrepancy between the global quota and the allocated individual quotas created serious hardship for fishermen who did not begin to fish right from the start of the season. Some fishermen could not practice their trade at their own pace, thereby causing a considerable decrease, if not a total loss, of their fishing revenue.

The Administration offers to reinstate the catch limit only.

Considering the Québec Ombudsman's arguments, the Ministère and the Société agreed that the procedures implemented in 2001 were injurious to some fishermen and to modify said procedures for the 2002 season. To ensure fairness and equity, the MAPAQ and the FAPAQ consulted the fishermen's association and announced that only individual quotas would be maintained for the 2002 season.

The fishermen's association does not agree.

The association appealed to the government, before turning to the Québec Ombudsman. It called for not only the retention of the zone's global quota, but also for the retention of the same individual quotas as in preceding years and a season closure on July 31 instead of August 15.

The Québec Ombudsman encourages and closely follows the discussion proceedings.

Considering the discrepancies in the calculations for the previous year, implementing the same policy would probably bring the same results. Consequently, talks between the members of the association and between the association and representatives of

the MAPAQ and the FAPAQ continued. The Québec Ombudsman, who had encouraged the parties to continue their negotiations, followed the debate closely.

A solution is found and accepted happily by all parties.

Thanks to the understanding and willingness to cooperate of all parties involved, a happy compromise sprang forth out of the last discussions. The Société, having reperformed its calculations with more precision, proposed to keep individual quotas, but this time with a more realistic limit of 932 black sturgeon, for a global weight of 14,370 kg which is to be divided among individual quotas on a pro rata basis, based on the catch history of each fisherman since 1997.

Moreover, the Société agreed to consider raising individual quotas during the season for the zone in question if the average catch weight was found to be at least 5% less than the average weight used to calculate the total number of intended catches for the season. Thus, every fisherman is accorded his rightful catch limit while still respecting the global quota.

In the end, the members of the fishermen's association accepted the MAPAQ and the FAPAQ's joint proposal. The Québec Ombudsman found the results of these proceedings satisfactory.

Faulty advice

A citizen requests compensation.

During the ice storm in January 1998 in the province of Québec, several farm operations were badly damaged. At the time, the government proposed a compensation program managed by the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation du Québec (MAPAQ), targeting, among other groups, maple syrup producers.

One citizen claimed compensation from this program for damages to the trees on his maple stand which a neighbour had been renting for several years.

Following the advice of the Ministère, he does not submit certain documents. His request is rejected.

In order to calculate compensation, the program rules stipulated that the land owner submit his tax returns for 1996 and 1997 since they would indicate how much revenue he made from the lease of his land. However, the citizen did not submit these returns at the time he made his claim in 1998 because he had not yet received the rent due for those two years. Actually, it is only in February 1999 that he finally did receive the rent payments.

The citizen notified the Ministère of this situation and asked whether it was necessary to submit amended tax returns. The Ministère answered by saying that this was not necessary since the citizen's case file included a notarized lease providing all the required information about the land rental. The land owner's compensation claim was rejected. The citizen consequently requested the intervention of the Québec Ombudman.

The Ministère's advice is faulty. The citizen receives $19,000.

The investigation revealed that the Ministère's rejection was justified since the tax returns submitted should have mentioned the citizen's revenue from the rental of his land. Yet, according to the Québec Ombudsman, the case couldn't be closed on that basis only since the land owner's omission was due to faulty advice from the administrative authorities themselves. It was agreed that the MAPAQ would reconsider the citizen's compensation claim following a review of the amended tax returns by the Ministry of Revenue. This was done as agreed and once the assessment notice was issued, the MAPAQ reviewed the citizen's claim once again. In the end, the citizen was granted a significant compensation payment.

3.1.2

The Ministère de l'Éducation

Student Financial Assistance Program

In order to promote access to higher education, the government created in the early 1960s a Loans and Bursaries Program managed by the Ministère de l'Éducation. The program's goal is to give less affluent students access to graduate studies, as well as secondary vocational studies.

This program is said to be contributory and supplementary. It is contributory in the sense that the student is supposed to be the main financial contributor for his or her studies. Parents or spouses are also expected to contribute financially to the student's tuition. The State's role is therefore supplementary in the financing of a student's studies in that it will provide students with the resources they lack after they and, depending on the individual's situation, their parents or spouse, have contributed their proper share.

It is with these two constituent principles of the program in mind that the Québec Ombudsman evaluates the application cases it receives.

A bankruptcy case

Last year, the Québec Ombudsman asked the Ministère to look at the situation of a citizen who went bankrupt before beginning his studies, during the fiscal year for which his revenue was under consideration for financial assistance. In bankruptcy cases, taxpayers must submit two tax returns. The first one covers the portion of the year preceding bankruptcy (pre-bankruptcy return); the second covers the period beginning the day after bankruptcy is declared and terminates at the end of that fiscal year (post-bankruptcy return). Nonetheless, the Ministère took the student's total revenue for the fiscal year into account when determining what the student's financial contribution was to be.

The Ministère takes a student's revenue before bankruptcy into account.

The student was not able to save money during this period.

The Québec Ombudsman concluded that applying the ratio of contribution on that basis was not reasonable in this student's case. Actually, based on the student's revenue before bankruptcy, it was presumed that he saved money to pay for his future studies. However, people go bankrupt because they no longer have enough money to meet their obligations, including any savings.

The Ministère considers only revenue after bankruptcy.

The Québec Ombudsman expressed its opinion about this case to the Ministère which consequently agreed to modify its procedures. For one thing, the Ministère ageed to take into account only revenue received after bankruptcy. The Ministère further agreed to remain open and flexible in reviewing each case submitted in order to fully grasp each student's situation.

Exemption procedures

In some cases, the Ministère can override standards.

The Act respecting financial assistance for education expenses allows students to receive greater assistance than that available through the provisions of the Loans and Bursaries Program when a student finds himself in a situation that is not covered by the Program and their lack of financial resources caused by this situation threatens to compromise their studies. Only the Minister himself can override the Program's rules. Before a decision can be made, the Minister must get the opinion of a review panel for exemption requests, which is composed of students as well as members of educational institutions and the socio-economic sector. In his annual report, the Minister must account and justify such financial assistance amounts awarded.

Students must submit a bulky file.

Obviously, these are exceptional procedures. In such cases, the burden of proof rests on the shoulders of the students. The student must therefore submit a letter explaining how his situation is special and listing all the attempts made at finding other sources of funding. A letter of recommendation from the institution's Director of financial assistance and a letter from the educational authorities indicating the student's expected graduation date must also be provided. Furthermore, the student must submit a detailed budget, copies of previous transcripts, as well as any other document substantiating the exemption request.

Process is not adapted to handle a large volume of similar case files.

This process was not in[illegible]ded for a large volume of case files with similar characteri[illegible]ics.

Two examples

Following the creation of the program for reduced contribution spaces in daycares, the Ministère capped at $5 a day the maximum allowed cost of daycare services. Considering that, in principle, the program implemented by the Ministère de la Famille et de l'Enfance is universal, all students benefiting from financial assistance were deemed to have access. That is not the case. There is a shortage of "$5 spaces" and even the Ministère admits that universal access will not be a reality before 2005-2006. As a result of this shortage, many students have had to pay approximately $25 a day for daycare services only to find themselves in financially difficult situations which threaten to compromise their studies.

Students unable to find $5 spaces in daycares.

The same is true for students receiving support payment solely for the children. The regulation requires that this amount be added to the recipient student's revenue statement and the amount of financial assistance awarded is reduced accordingly. As with the previous case, these students' studies are often comprised as a result.

Others receive support payment for their children only.

Apprised of these problems, both by the Québec Ombudsman and other intervening parties, the Ministère agreed to process these cases as exemptions. Nevertheless, the Québec Ombudsman noticed various other obstacles reduced the efficiency of the process. For one, most students affected by these problems did not even realize that they were eligible for such supplemental financial assistance. For another, the process required that the students submit many documents unrelated to their particular situation, thereby lengthening the request process and the Committee's review process. These procedures needed to be simplified.

The Ministère agrees to process these situations as exemptions.

The Ministère concurred with the Québec Ombudsman and agreed to limit the documents required to only those being pertinent to daycare costs or support payments, as the case may be.

The Ministère now requires only relevant documents.

The Ministère also asked educational institutions personnel to inform the students of potential exemptions to obtain additional financial aid.

Interpretation made of regulations must be reasonable

Increased amounts of financial assistance are refused.

A student living with her mother in a Bas-Saint-Laurent municipality moved to Québec to pursue her university education. She requested additional financial assistance based on the fact that she no longer lived with her mother and now needed to cover food and accommodation costs.

The Ministère believed she should live with her father.

The Ministère rejected her request for additional financial aid since it was felt that she should live with her father who resided fairly close to the university. The Regulation respecting financial assistance for education expenses indeed prescribes that if one or both parents reside within a certain distance from the educational institution (the "zone of residence"), the student is deemed to be living at that residence. The financial assistance amounts calculated are therefore less for students living with their parents than for "non residents". After having made a sincere effort to have her file corrected, the student contacted the Québec Ombudsman.

Her parents are divorced. The student was under her mother's care.

The investigation revealed that the student's father received welfare benefits and lived in a studio apartment. Moreover, her parents were divorced. The divorce proceedings awarded legal guardianship of the student's two younger sisters to the mother. Since the student had reached majority at the time of the divorce, she obviously was not entrusted to the guardianship of either of her parents. However, the judgment indicated that the three sisters were under the care of their mother.

Her younger sisters should have benefit from more financial assistance.

Moreover, in cases of divorce or separation, the Ministère's administrative practice is to deem the student to reside only with the parent who was awarded guardianship when the child was a minor. Therefore, should the student's two younger siblings choose to attend the same university, they would not be required to live with their father, unlike their elder sister. The Québec Ombudsman found the situation at odds with the equal treatment to be granted to members of a same family under similar circumstances. It therefore suggested that the Ministère grant "non-resident" status to the student.

The student won her case.

Considering all the elements of this case, the Ministère agreed that the student was truly under the care of her mother and decided to no longer regard the student as obligated to live with

her father, thereby allowing her additional financial assistance. In addition, the Ministère informed the Québec Ombudsman that it would modify its administrative practices in order to guarantee students a fair and equitable treatment in such cases.

Three days too early

The Ministère refused to write off a citizen's student debt.

An ex-student declared bankruptcy on May 29, 1998. He included in his bankruptcy statement the student debt incurred under the Act respecting financial assistance for education expenses. He was discharged from bankruptcy in September 1999. He then learnt that the Ministère did not write off his student debt. Including accrued interest, the citizen still owed $26,000.

Bankruptcy declared less than two years after the citizen completed his studies.

To justify its decision, the administration cited the federal Bankruptcy and Insolvency Act in effect in May 1998 which contains a provision excluding "any debt or obligation in respect of... any enactment of a province that provides for loans or guarantees of loans to students where the date of bankruptcy of the bankrupt occurred before the date on which the bankrupt ceased to be a full- or part-time student, as the case may be, under the applicable Act or enactment, or within two years after the date on which the bankrupt ceased to be a full- or part-time student." Since the Ministère believed the student finished his studies on May 31, 1996, the student therefore could not declare bankruptcy before June 1, 1998 to be eligible for a student debt discharge. It appears that the trustee had not informed the citizen of this provision, which is why the citizen declared bankruptcy three days too early. Outraged that such a small error could give rise to such heavy penalties, the citizen appealed to the Québec Ombudsman.

Presumed date of completion of studies went unverified by the administration.

The Ombudsman did not question the interpretation made by the Ministère of the Bankruptcy and Insolvency Act. It did, however, examine the date that the Ministère claimed was the student's last day of studies (May 31, 1996). The investigation revealed that during reviews of financial assistance requests for the fall and winter terms, the administration simply presumed that the semester ended on May 31. Without verifying that assumption any further, this date was automatically entered into the computer system. Generally, this procedure is of little consequence, thus explaining why the same procedure was used in this particular student's case for the review of his

request for financial assistance for the 1995-1996 school year. However, this time, the assumption was wrong. The Québec Ombudsman discovered that the student finished his studies at the beginning of March 1996. The educational institution confirmed the fact that the student had indeed completed his studies on March 9, 1996. Therefore, more than two years had indeed passed between the time the student had completed his studies and the moment he declared bankruptcy.

Corrections are made but more attention required in the future.

Consequently, the Ministère revised its decision and the student was granted a complete discharge from his debt. For such cases, the Québec Ombudsman believes that the administration should ensure verification of the actual date of completion of studies rather than relying on its own information.

A case is not processed

File correction request went untreated: student withdrew from school.

A citizen contacted the Ministère de l'Éducation (MEQ) to have various corrections made to her financial assistance calculations. She received no response from the administration. Not having sufficient funds to pay for tuition, the citizen was forced to withdraw from her studies. She then filed a complaint with the Québec Ombudsman.

Citizen was eligible to the program for people with serious functional disabilities.

The investigation failed to reveal clearly why her requests for correction were ignored. Nevertheless, a review of her file showed the Québec Ombudsman that the citizen had clearly informed the Ministère that she was suffering from a serious and incurable disease which entitled her to the assistance given to people with serious functional disabilities. In such cases, all financial assistance is granted in the form of a bursary, rather than as a combined loan and bursary.

The $3,255 debt is written off.

At the request of the Québec Ombudsman, the citizen's approved $3,255 loan was transformed into a bursary, thereby writing off the citizen's debt.

3.1.3

The Ministère de l'Emploi et de la Solidarité

An important initiative: "an Act to combat poverty and social exclusion"

One of the most important government initiatives taken last year was undoubtedly the adoption in December 2002 of Act 112, the "Act to combat poverty and social exclusion", which aims, over the next ten years, to reduce Quebec's poverty rate to one of the lowest amongst industrialized nations.

The Québec Ombudsman can but applaud such an ambitious project. As the preamble of the bill states, this national imperative falls into step with the global movement to foster social, cultural and economic development for everyone.

Over and above its principles, the Québec Ombudsman will remain attentive to the implementation of this bill whose action plan, upon the writing of this report, is yet to be released.

Support Payment and Social Assistance Calculations

In April 2002, several women drew the Québec Ombudsman's attention to the situation of single-parent families receiving child support and financial aid from the Ministère de l'Emploi et de la Solidarité.

The Act respecting Income support, employment assistance and social slidarity states that these amounts are to be considered as revenue and taken into account when calculating the welfare benefits granted to the male or female head of a household to help meet his or her needs. The amount of social assistance is reduced by the corresponding amount of the child support payments.

As of 1993, aware of the particularly precarious situation facing single-parent families and in order to prompt support payers to respect their obligations, the Québec Ombudsman recommended the exemption, if not total than at least partial, of child support

payments from the financial assistance calculations for the parent caring for the children. The Ministère did not follow up on this recommendation.

In 1997, modifications to family policy decreed that having one or more children no longer affected the calculation of social assistance amounts awarded to a parent. There was therefore an inconsistency in this procedure which reduced the assistance given to some while taking into account amounts paid out for others. The Québec Ombudsman, therefore reiterated his recommendations.

In 1998, the Ministère excluded from the calculation a maximum of $100 paid out as child support, applicable to families with a child under five years of age.

Despite this improvement, a study published by the Ministère in November 2001 revealed that 30% of single-parent families were living below the poverty line. Those most affected were the children. The study also concluded that poverty had seriously impacted health, education and delinquency.

After the government announced its intention to adopt an Act to combat poverty, the Québec Ombudsman repeated its recommendations yet again.

In communications with the Ministère, the Québec Ombudsman stressed the importance of exempting child support from social assistance calculations granted to the head of the family as a method to help combat poverty.

In its budget presentation of March 2003, the Minister of Finance announced the government's intention to extend the $100 exemption for all social assistance beneficiaries receiving child support, regardless of the child's age. The Québec Ombudsman regards this decision as a step in the right direction.

Being careful not to create a new tax liability when loans from the Ministry of Employment and Solidarity are reimbursed

At times, citizens must resort to social assistance while waiting for an organization [such as the Commission de la santé et de

la sécurité du travail (CSST), the Société de l'assurance automobile du Québec (SAAQ) or the Régie des rentes du Québec (RRQ)], to grant them benefits or other compensation. As processing may take several months, such payments are often awarded retroactively from the decision date. At times, the retroactive period can span more than one fiscal year. Once a decision is made, the government agency in question refunds the Ministère de l'Emploi et de la Solidarité for the payments made during the waiting period and it pays out the balance to the citizen.

Several people have told the Québec Ombudsman that they had found this process detrimental, as they found themselves having a tax burden that they never should have had to shoulder.

Citizen must refund the MES for benefits received during 2000.

For instance, the Régie des rentes du Québec granted $13,000 in disability benefits to a citizen in 2000. Of that amount, $6,500 was for fiscal 1999 and $6,500 for fiscal 2000. The Régie refunded this amount to the MES since the citizen had received social assistance during the two years that the disability benefits were to cover. The Ministère received the refund from the Régie in December 2000 and deposited it in January 2001.

The Ministère du Revenu then included the total amount of disability benefits in the citizen's revenue calculation for 2000, including the retroactive amount for 1999 (while allowing for a deduction for the retroactive amount of the precedent year). This inclusion increased the citizen's tax liability by $1,200 for fiscal 2000.

The citizen cannot deduct the amount from her 2000 tax return because MES had deposited it in 2001, thus incurring a tax surcharge.

The Québec Ombudsman's investigation showed that while it is possible to defer retroactive payments granted by the Régie des rentes, the same is not true for social assistance payments.

The citizen, however, could have received the deduction for fiscal 2000 if the MES had deposited the refund in the same year. The rule is crystal clear: the Ministère du Revenu only applies fiscal deductions to social assistance refunds for the year when the refund was deposited. The citizen therefore had a kind of "negative" revenue for 2001, yet had to pay hefty taxes for fiscal 2000.

The Ombudsman considered the situation unjust. The MES rectified it.

The intervention of the Québec Ombudsman alerted the MES to the potential damage resulting from the deposit of refunds carried over several years. The MES then proceeded to correct

the citizen's situation, as well as other similar cases drawn to its attention. Incidentally, measures to avoid such problems in the future are under consideration. The Québec Ombudsman will continue to monitor the issue.

Recovery procedures pursuant to false statements

Every year, the Québec Ombudsman receives several requests for intervention concerning the Ministère's recovery procedures for payments made under false pretence. When the citizen's innocence is not in doubt, the Ministère retains an amount of $56 from the monthly benefit. However, when a false claim (a claim submitted by a person who knowingly provided false information), is made, the Ministère deducts $112 from the monthly benefit. If it is a repeat offence, the deduction is $224.

It goes without saying that in some cases citizens find themselves in intolerable financial predicament. They are unable to meet their own and their family's most basic needs. Though it is true that these citizens lied to the Ministère, sometimes the Québec Ombudsman must intervene nonetheless, due to circumstances and the fundamental principle of human dignity. The following are examples of the situations which may warrant such intervention.

A person needs food and lodging to study

Close to concluding his studies, a citizen could no longer pay rent and had to borrow money to eat.

A citizen was pursuing his studies through a training program authorized by Emploi-Québec. Due to a deduction of $224 from his social assistance benefits, the citizen was left with no more than $374 a month on which to live. He was unable to pay his rent and was forced to borrow money left and right simply to eat. He even had to rely on food banks. The citizen found such financial insecurity extremely worrisome and interfered with his concentration. He was considering quitting school until an aid agency for the disadvantaged sent him to the Québec Ombudsman.

The law states that under special circumstances, such penalty may be suspended. However, the Ministère's criteria in this regard are very strict. For example, every expense in the citizen's budget is evaluated and accepted or refused; approved expenses

are set to the dollar. Moreover, the sheer number of such requests result in lengthy delays in the review process. When the Québec Ombudsman intervened, there were delays of up to eight weeks. The Québec Ombudsman expressed how important it was to lend support to the citizen who was at a crucial stage in his life, which could lead to a diploma and, eventually, a job. The Ministère agreed to reduce the penalty by half, $112 a month, until the end of the semester.

The citizen had to be given the chance to receive his diploma in order to find employment.

The Québec Ombudsman had to intervene once again to insure that the Ministère would not reduce the new graduate's assistance payments immediately at the beginning of June 2000, in order to give the citizen some time to find a job in his field.

The Ministère agreed to reduce the penalty.

A debt to write off

A 76 year-old citizen is widowed with hardly any family relations in Canada. The Old Age Security Pension and the Régie des rentes du Québec provide her only revenue. The Ministère sought to recover $13,000 for assistance payments she unrightfully received about fifteen years ago. The citizen suffers from memory loss and she does not remember having received social assistance benefits. Every month, the Ministère sent her account statements specifying the debt, thereby making the elderly woman very nervous. She is convinced that the Ministère is harassing her. As a result, the citizen leaves her residence to live in a Salvation Army shelter. This organization encouraged the citizen to appeal to the Québec Ombudsman.

A citizen cannot refund the Ministère. She feels harassed and flees her home.

The Québec Ombudsman surmised the citizen's weak health and took note of her obsession with the Ministère's claim. The Ombudsman enlisted the help of the citizen's personal physician to prove that her health problems were exacerbated by her current social conditions and her financial problems. The Ombudsman also referred to the citizen's low income as grounds for canceling her debt.

Constant reminders from the Ministère jeopardized her health.

After examining the citizen's case file and recognizing the citizen's special circumstances, the Ministère wrote off her debt.

The Ministère agreed to write off her debt.

Unreasonable penalty

The Ministère refused to reduce the penalty.

A young mother of three young children had her monthly social assistance payments reduced by $224 because she had knowingly submitted false information to the Ministère on several occasions. All she had left to provide for her family were her family allowance benefits and a little over $400 in social assistance. The citizen is faced with budget problems forcing her to ask the Ministère to reduce the penalty. Six weeks later, the Ministère's decision is announced: her request is turned down due to lack of special circumstances. The citizen then makes a second request which is again rejected by the Ministère for the same reasons. Distressed, she appealed to the Québec Ombudsman.

The citizen and her three children would have been in a very precarious situation. Thankfully, the Ministère reversed its decision.

The Québec Ombudsman noted the citizen's accumulated bills and unpaid rent. In fact, an eviction notice threatened to kick the family out of their home right in the middle of June in a city in the midst of a lodging crisis. The citizen and her three children ran the risk of finding themselves on the street without any means to relocate. The Québec Ombudsman reminded the Ministère of the citizen's three young children and suggested reviewing her reduction request a second time, keeping in mind the citizen's special circumstances. The Ministère agrees to reconsider their decision.

Collection

A citizen must be allowed the means to meet the basic needs of his family

The Ministère seized the income of a father of four children.

The Ministère seized 30% of a citizen's garnishment income for social assistance payments unrightfully received, which is the maximum amount permitted by law. The citizen had omitted to make an agreement to refund the Ministère because he believed that his budget was already too tight. He is the father and caregiver of four minor children and his employment income hardly covers his day-to-day expenses. His former spouse cannot pay child support since she is a recipient of last resort assistance.

Seizure was legal but amount claimed was unreasonable. The Ministère reduced its claim.

The seizure of the citizen's income obviously seriously worsened his financial difficulties. He requested the help of the Québec Ombudsman.

The Québec Ombudsman asked the citizen to establish a budget outlining his financial situation. With the budget and support documents in hand, the Québec Ombudsman succeeded in convincing the Ministère that a 30% seizure was not reasonable in this case. The Ministère reduced the seizure to 20% of the garnishment income. The citizen's situation is to be reevaluated in a year.

Overly drastic refund measures

A citizen over the age of sixty owed $2,400 to the Ministère de l'Emploi et de la Solidarité. The administration could not come to a refund agreement with the citizen. Actions are therefore taken to seize the citizen's vehicle and auction it off, which causes serious problems for the citizen since she lives in a small town inaccessible by public transport. She appeals to the Québec Ombudsman.

Citizen refused to come to a refund agreement. Her vehicle will be auctioned off.

To begin, the Québec Ombudsman requested that the Ministère suspend the vehicle auction seeing as the citizen was now willing to come to an agreement. The Ministère refused, claiming the citizen was not reliable. In the past, it happened that the citizen had agreed, only to change her mind without notice. The Ministère's employee in charge of this case file added that the citizen could not be trusted as she suffered from a personality disorder. In order to substantiate this claim, the Ministère submitted a medical report to the Québec Ombudsman.

Vehicle sold for a great deal less than its estimated value.

Consequently, the citizen's vehicle was sold for the price of $4,175, while its estimated value was between five and seven thousand dollars. The Ministère retained $2,400 from the sale to refund the amount due, plus $900 for various other costs. A total of $875 was returned to the citizen.

Nonetheless, the Québec Ombudsman pursued its investigation, focusing on the medical report submitted by the Ministère to back up its decision. The Québec Ombudsman asked a second physician to review the report, who confirmed that the severity of her disorder rendered her unable of understanding, negotiating and complying with an agreement. The Québec Ombudsman believes that, considering the citizen's severe mental and psychological fragility, the Ministère acted unreasonably by seizing the citizen's vehicle to obtain its refund. The Québec Ombudsman expressed its opinion to the administration.

Citizen was not in a state of mind to act sensibly. Under the circumstances, the measures taken were unreasonable.

The Ministère granted compensation for the lost profits on the vehicle. It will adapt its refund policies for fragile and vulnerable people.

The administration agreed to pay the citizen $2,400 as compensation for the lost profits from the low sale price of her vehicle at auction. Furthermore, the Québec Ombudsman requested that the Ministère review its policies to insure that repayment terms for high-risk payers are mitigated in the case of fragile and vulnerable individuals. The Québec Ombudsman will keep a close eye on the situation.

A case of psychological fragility

A mother fell into serious depression.

A single mother attempted for four months to receive social assistance. While studying at university, she fell into a serious depression and had to withdraw from school. The citizen lived with her brother, yet her illness and lack of money made their living situation unbearable.

Her psychological state rendered her unable of going through the process to obtain social assistance, so the Québec Ombudsman tagged along.

The citizen left her home town to settle in Montréal where she believed she would be better off. Though the citizen managed to find a place to stay with a friend, space is very limited and their living arrangements were rather cramped. A pastor from a religious group lent them a hand and found food for the family. Unfortunately, when the citizen spoke with the Centre local d'emploi, her discussion with the social assistance officer went sour. The citizen was very aggressive and the officer terminated their conversation. The citizen did not understand why she was required to submit so many documents at a time when she was under such hardship. She found herself at a dead end and, in distress, turned to the Québec Ombudsman for help.

The Québec Ombudsman realized that the citizen could not settle the situation herself despite the fact that she was almost certainly eligible for social assistance. The citizen's depression made her incapable of responding to the Ministère's requests, however legitimate they may be, except with excessive anger and frustration. To defuse an explosive situation, the Québec Ombudsman offered to accompany the citizen to her interview with the officer. For its part, the Ministère agreed to cooperate as well.

All goes well and the citizen obtained the assistance benefits that she was entitled to receive.

The interview went smoothly; all parties acted calmly and with mutual respect. The list of documents that the citizen must provide was clear and this time, she responded to the officer's questions with self-confidence and candour. Afterward, the Québec

Ombudsman helped the citizen obtain her divorce decree from the court and, in the meantime, the citizen took the necessary steps to complete her file. A few days later, the citizen received her first benefit payment and was able to find decent accommodations.

Faced with the impossible, exceptions must be made

A homeless citizen in his fifties living at a shelter neglected to show up at an important meeting with an officer from the Ministère which would have defined the best options or employment assistance solutions for his situation. In accordance with regulations, the citizen's monthly benefits are reduced by $150 due to his absence, thus leaving him with $287. The following month, the Ministère informed the citizen that his benefits are completely revoked since he neglected to retrieve his cheque from the Centre local d'emploi. Highly agited, the citizen visited the Québec Ombudsman's office.

When a citizen does not show up for a meeting – his benefits are reduced. When he then fails to retrieve his cheque – his benefits are revoked.

The Québec Ombudsman understood that the citizen suffered from serious psychological problems. The conversation focused on the citizen's objectives. He said that he is unable to live any life other than that of a vagrant and his only desire is to be left alone. Following this interview, the Québec Ombudsman spoke with the officer in charge of the citizen's case file and gave its opinion that the citizen was not in a state of mind that permitted him to meet any commitment. The Ministère concurred with the Québec Ombudsman. The citizen's benefits were fully restored.

The citizen's state of mind explained his incapacity to meet his commitments. Benefits are restored.

Training was necessary and should have been approved

An immigrant arrived in Canada in May 2002. He is a trained welder with ten years of work experience in his home country. Unemployed, the man received benefits from the Ministère de l'Emploi et de la Solidarité (MES). A representative of Emploi-Québec referred him to a job-finding club for new immigrants. Despite his efforts, he could not find employment. The problem stemmed from the fact that though his welding experience was recognized in Québec, he did not master a specific welding

A man could not find employment. He did not have a technical skill commonly used in this country. He registered for appropriate training.

technique frequently used here. Since employers in the province consider this skill essential, the man was motivated to get the required training. Following the advice of two officers handling his case file with the Ministère, one working for Emploi-Québec and the other for Social Assistance, the man signed up for the appropriate courses.

Considered a student, the man's social assistance benefits were cancelled. Then, the Ministère de l'Éducation turned down his student financial assistance request since he was not a full-time student.

He ended up regretting that decision. On one hand, Emploi-Québec refused to help him defray the cost of his courses, as it is customary to finance only basic training. As the man is already a certified welder, any additional courses are considered skill development and not basic training. On another hand, the man's social assistance benefits are cancelled because he is now deemed to be a student. Moreover, he is asked to reimburse the social assistance payments received since he began his training. To top it all off, the Ministère de l'Éducation refused the man's application into the Student Financial Assistance Program since he was not a full-time student as is required. Penniless and panicked, the man appealed to the Québec Ombudsman.

The training course is absolutely necessary.

The investigation revealed first of all that the man had been a model job seeker. The counselor with the job club mentioned the fact that the man had contacted eighty- three employers. The Québec Ombudsman also discovered that there are possible measures that the Ministère can take to defray costs for upgrade training if the applicant can prove "with exhaustive research that the training is crucial to obtain employment". The Québec Ombudsman believed that eighty-three futile job applications constituted "exhaustive research". In addition, it was reasonable to conclude that the main reason the man was not hired was due to the absence of this particular skill.

The Ministère corrects the situation.

The Québec Ombudsman shared these conclusions with the Ministère who, as a result, cancelled its refund claim and agreed to grant him retroactive benefits.

Terminal stage cancer must be viewed as a "serious employment constraint"

A recipient of social assistance suffering from terminal stages of intestinal cancer. He asked the Ministère de l'Emploi et de la Solidarité (MES) to grant him the monthly benefits given to adults with "serious employment constraints", which are

awarded to people who are unable to work for sustained periods of time or permanently. To back up his request, the citizen submitted a medical report along with his application. After reviewing the citizen's application, the Ministère concluded that the citizen's illness is actually a "temporary employment constraint", where monthly benefits are approximately $130 less than those for "serious constraints". Moreover, people with temporary constraints benefits are subject to more frequent health exams.

A citizen is in the terminal stage of cancer. He requested and was denied benefits for adults with serious employment constraints.

Taken aback by this decision, the citizen spoke to the officer handling his file who told him that the decision was final. Therefore, the citizen paid another visit to his physician and had another medical report written, this time stressing the irreversible nature of the illness. After a delay of several weeks, there was still no answer from the Ministère. The citizen therefore requested the help of the Québec Ombudsman.

A second request is ignored.

The investigation revealed that, due to an error, the second medical report had not been sent to the appropriate department. However, when the correct department finally received the report, it immediately recognized the severity of the citizen's illness. The administration granted the citizen benefits for adults with "serious employment constraints", beginning on the day he submitted the medical report to the Ministère.

Thanks to the Québec Ombudsman's intervention, the citizen is granted the benefits he requested.

3.1.4

The Ministère de l'Environnement

A serious snag in the democratic process

During the National Assembly session of May 7, 2002, the Ministre de l'Environnement tabled Bill 103, an Act to impose restrictions on pig farming, and requested retroactive enactment beginning on the first of May. The Bill imposed a moratorium on the issuance of all new authorization certificates for pig farming and stated that before or on June 15, 2002, the government must adopt new regulation to replace the Règlement sur la réduction de la pollution d'origine agricole [Regulation imposing reductions for agricultural pollution].

Bill aimed to have a retroactive regulation adopted.

The combined effects of these legislative provisions was such that the regulation would also be retroactively implemented from May 1, 2002 so that all unprocessed requests for authorization submitted at that time would be subject to the new regulation.

Another important factor, by adopting the Bill, all prepublication measures were suppressed, specifically countermanding Article 124 of the Environmental Quality Act and Articles 8 and 17 of the Regulations Act.

Publications to inform the public about the Bill are suppressed.

While the necessity to act on a situation with so many complex and fundamental issues at stake could not be denied, the Québec Ombudsman was convinced that suppressing publication was violating democratic principles.

The rushed adoption of the Act and its regulation violated democratic procedures.

In truth, aside from impeding the actions of elected representatives and citizens in general who wished to express their opinions on the topic or simply to understand the issue, the haste with which this law was to be adopted and the government's intention to enact, in merely five weeks a bill with retroactive consequences, fully contradicted the fundamental rules of transparency.

Considering the importance of the principles at stake, the Québec Ombudsman chose to intervene with the Ministre de l'Environnement and to share its comments with the various political parties.

Draft legislation discussed behind closed doors.

The Québec Ombudsman particulary stressed the fact that while the elected representatives were debating the Bill, the draft legislation, whose content was unknown, was still being discussed by public servants and chosen group representatives behind closed doors.

Under these circumstances, how can MNAs have sufficient information and leeway to decide which solutions were best for the greater good? How could citizens or citizens groups participate in this important debate with full understanding of the issues?

Due precisely to the very complexity of environmental issues, the Environmental Quality Act decrees that relevant draft legislations put forth by the government must be published in the Gazette officielle sixty days prior to adoption, thereby extending the minimum delay stipulated by the Regulations Act by fifteen days.

The contents of the regulation would only be revealed upon its adoption. Citizens therefore could not voice their opinions.

During this period, citizens may submit their comments, objections and suggestions to the government.

Ultimately, Bill 103 violated citizens' right to voice their opinions. Let us recall that the law was to take effect the same day that it received government approval and that this approval could be granted no later than June 15, 2002.

The Ministère supplied no convincing argument to justify such a violation of the rules of transparency and consultation.

The Québec Ombudsman could get no justification for these extremely hasty procedures. Indeed, it is true that pollution caused by pig farming waste was, and still is, detrimental to the environment. This pollution was undoubtedly causing enough harm to necessitate new legislative intervention, yet it must be mentioned that this was an issue that had been under debate for several years. No Ministère staff member could confirm for the Québec Ombudsman that such extremely dire consequences would arise from the sixty day delay to justify contravening the rules of transparency and democratic debate.

The Québec Ombudsman recommended that the Minister respect the laws in effect. The Minister did not follow this recommendation.

As a result, the Québec Ombudsman recommended that the regulations to reduce agricultural pollution continue to be governed by standard existing laws. The Bill was approved on June 8, 2002, while the regulation was adopted by decree on June 12 and came into effect on June 15, 2002.

The Québec Ombudsman still believes that the governmental process in the adoption of this Act and its regulation was riddled with serious violations of the rights and privileges of elected representatives and citizens alike.

The Québec Ombudsman regrets these proeedures which compromise the quality of our democracy.

Sadly, such procedures are a setback in the standards a democratic state in its obligation to uphold transparency.

The Administration appropriated the rights of the legislator

In December of 2001, two farmers applied for an authorization to build and manage a pig farm. The regional branch reviewed their application and, after gathering all the necessary details from the farmers, decided that their project complied with the regulations. The certificate of authorization is submitted to the Regional Director for signature on April 26, 2002.

The Ministère refuses to grant an authorization certificate.

That same day, the acting Deputy Minister in charge of regional operations issued an order to all regional directors suspending the signature of all certificates of authorization for pig farms. As a result, the farmers' certificate was not issued. Believing that their rights had been violated and that they were subject to serious moral and financial damages, the couple appealed to the Québec Ombudsman in June of 2002.

The investigation revealed that on April 26, 2002, the Ministère was preparing a Bill implementing a moratorium on the issuance of authorization certificates for pig farms. The Bill was not introduced to the National Assembly until May 7, 2002. On June 5, 2002, the "Act imposing restrictions on pig farming" was adopted, barring retroactively from May 1 the issuance of any new authorization certificate. In the opinion of the Québec Ombudsman, the moratorium clearly should not have been implemented until May 1. By anticipating the moratorium by five days, the Administration misappropriated the legislator's prerogative.

The order to stay all certificates of authorization was not justified. The moratorium was not in effect until May 1.

After discussing in vain with the Ministère's higher echelons, the Québec Ombudsman sent her conclusions to the Minister in June, informing him that should the authorization certificate not be issued, these farmers should "receive total compensation for expenses directly incurred and benefits for moral damages

The Québec Ombudsman contacted the Minister.

and loss of future revenue". In addition, other citizens in the same situation should receive the same treatment.

The Deputy Minister's arguments were unfounded.

At the beginning of August, the Québec Ombudsman received a response from the Deputy Minister. In her response, she stated that it was the administration's duty to "take into account the entire legal and factual context" when making such decisions and that each request must be treated by "complying with the legal framework that would ultimately be created by the adoption of an Act whose parameters were not yet known". The Québec Ombudsman's comments were dismissed because the "Ministère had acted properly and in good faith, and had considered all the relevant information while maintaining its mission to protect the environment".

In the Québec Ombudsman's opinion, this answer was not only surprising but also unacceptable. By relying on "the entire legal and factual context" and the Ministère's "mission" as arguments to refuse to admit its error and exert efforts to correct it, the Ministère had attributed itself the right to rescind the governing law and implement the provisions of an act before the date prescribed by the MNAs. The Québec Ombudsman deems this stance to be an abuse of authority.

In a parliamentary democracy such as ours, the authority of Parliament is a fundamental principle that cannot be abused by the Administration without posing serious risk to the stability of our institutions. To wit, imagine that the National Assembly enacted a law tripling fines for speeding and that these new fines would come into effect on May 1. What would be the citizens' reaction if our Sûreté du Québec took it upon itself to apply the new fines one week before the date approved by law, justifying their actions by referring to the "factual context" and the police department's "mission to protect"?

A second intervention with the Minister failed as well.

The Québec Ombudsman contacted the Minister again on August 23, stressing the right of those concerned to have their requests processed in accordance with the legal regulations actually in effect on April 26, 2002 and to which said requests then complied. The Québec Ombudsman issued two specific recommendations: to grant rightful compensation to the farmers as well as to the other citizens in the same situation.

In September, the Minister answered the Québec Ombudsman by saying that he would not follow her recommendations since, in his opinion, the Ministère had acted correctly and in accordance with its lawful duty to protect the environment.

The Québec Ombudsman submits the case to the Quebec Premier.

Convinced that an administration's duty to uphold its mission does not justify it taking over the role of the MNAs and that such a situation was unacceptable in a constitutional state, the Québec Ombudsman, as authorized by the law, brought this situation to the attention of the Quebec Premier. However, the Premier has not yet replied, despite a follow-up letter sent on December 4, 2002.

How to interpret the Québec Ombudsman's intervention.

When the Québec Ombudsman's opinion was made public, some people protested, believing that she supported the uncontrolled development of pig farming. Yet her intervention should obviously not be regarded in this way. The Québec Ombudsman in no way questions the merits of the new law. She is aware of citizens' perfectly legitimate concerns about agricultural pollution. What she cannot accept is the Administration's decision to apply certain legislative provisions prior to the date approved by the overriding authority, that of the Quebec National Assembly. The Québec Ombudsman remains convinced that such methods constitute an abuse of power and present a potential danger to democracy.

3.1.5

The Ministère de la Famille et de l'Enfance

Precise information for all

In the previous three annual reports, the Québec Ombudsman outlined problems facing parents since the inception of the reduced contribution program for daycare (commonly referred to as $5-a-day child care). Regretfully, the Ministère refused to implement the Québec Ombudsman's recommendation to make the program really universal.

However, during discussions between the Ministère and the Québec Ombudsman, the Ministère did concur on the importance of keeping the public fully informed about the program's procedures and available spaces in daycares. The Ministère agreed to adopt specific measures to inform parents of existing family programs and resources at their disposal. To this end, the Ministère began an extensive information campaign last year through various communication methods such as mailing information pamphlets directly to family allowance beneficiaries, producing brochures, including an insert in Les Hebdos du Québec Inc. (3 million copies), publishing a special insert in daily newspapers in May 2000 (650,000 copies), implementing a telephone campaign, etc.

However, the Québec Ombudsman examined the various publications and immediately noticed inaccuracies in the text published in weekly and daily newspapers. The most significant inaccuracy stated that the program currently offered universal access. However, as the Ministère had already stated, this was not the case since universal access would be available only as of 2005-2006.

Secondly, the Québec Ombudsman noted that parents who have no access to reduced contribution program were not offered adequate information. For one, information regarding available spaces referred only to known resources. For another, information about the few remedial measures for parents not benefiting from the subsidy had been targeted for only one specific group – family allowance beneficiaries.

Furthermore, the Québec Ombudsman felt that the leaflet regarding anticipated tax credits was incomplete and inaccurate with no explanations on how to obtain the credit or what criteria determined eligibility. The leaflet was in fact practically useless. The Québec Ombudsman told the Ministère that precise and thorough information liable to instruct eligible citizens on how to obtain the tax credit should have been distributed to the entire population.

The Ministère duly noted the Québec Ombudsman's comments and, in the fall of 2002, sent revised texts awaiting publication to the Québec Ombudsman for consideration. The Québec Ombudsman intervened yet again, signaling various inaccuracies and omissions that were similar to those in the Ministère's previous publications and stressing the necessity to widely distribute more concrete information. The Québec Ombudsman also recommended adding information in the revised publications on how student beneficiaries of the Loans and Bursaries Program can have child care costs reimbursed by the Ministère de l'Éducation.

When the Ministère's new publications were redrafted, the Québec Ombudsman was satisfied with the revised texts.

3.1.6

The Ministère des Relations avec les citoyens et de l'Immigration

Registrar of Civil Status

Last year, the Québec Ombudsman was occupied once again with problems concerning the Registrar of Civil Status.

In the previous annual report, the Québec Ombudsman drew attention to the faulty and incomplete information occasionally provided at the Registrar of Civil Status' Intake Officers.

Lack of consistency

Efforts were made to rectify the situation. However, an examination of the complaints received last year revealed that these shortcomings were actually part of a larger problem: a lack of consistency both in terms of the information conveyed, as well as in the processing of case files.

For example, a citizen requested birth certificates for her four children. However, when the certificates arrived, the citizen noticed that the father's name was not spelled in the same way on the four documents. She informed the Registrar of Civil Status of the necessary corrections to be made and asked to have the four birth certificates reissued all together. Yet when the revised certificates arrived, spelling of the father's name still varied from one certificate to another. The citizen then appealed to the Québec Ombudsman.

A citizen noticed inconsistencies on her certificates and notified the Ministère of the necessary corrections to be made. The Ministère reissued the certificates with new errors.

During its investigation, the Québec Ombudsman discovered that the father's name, of foreign origin, included three different parts. The entire name was quite lengthy and could not fit into the allotted space on the children's birth certificates, obliging the Registrar of Civil Status to abbreviate the father's name. That did not explain why the father's name was spelled differently on each certificate, twice over again. The Québec Ombudsman later learned that the inconsistencies were due to an absence of rules dictating how to abbreviate names on the Ministère's

Several Ministère employees abbreviated the name differently.

certificates. Moreover, certificate production procedures within the Ministère meant that requests were distributed equally among the various employees in charge of producing certificates, regardless of whether they had been sent by one person in one envelope. In addition, employees had no way of knowing whether a citizen had issued other requests. These two factors together explained why the father's name was abbreviated differently on each of the four birth certificates.

Consistency is finally attained.

Thanks to the Québec Ombudsman's intervention, the four birth certificates were treated by a single employee and were consequently corrected in a consistent manner.

After this incident, the Québec Ombudsman suggested that the Ministère revise its procedures for distributing requests among its employees and create a record system to enable employees to verify whether the requests they were handed had related requests distributed to another employee in the office.

Problems with faxed requests

The Québec Ombudsman also received numerous complaints regarding how requests sent by fax were processed. Several citizens who sent faxes to the Ministère never received message confirmations. Consequently, it was impossible for these citizens to know whether their files were being processed or not.

A citizen sent a request by fax but did not receive a message confirmation.

For instance, a citizen faxed a request to the Registrar of Civil Status for three certificates: her own birth certificate, her husband's birth certificate and their marriage certificate. Since the citizen had not received a message confirmation, she sent her request for the three certificates again the next day. Following this, the citizen contacted the Registrar of Civil Status to confirm reception of her request and clarify that she did not want double copies of the certificates sent and charged to her twice. The citizen was informed that the Registrar of Civil Status had no way of knowing whether any of her requests had been received, nor could they tell her if the requests were presently being treated. The citizen therefore asked the Québec Ombudsman for its help.

Requests were entered into the Registrar's database only upon being processed.

The Québec Ombudsman's investigation revealed that the Registrar of Civil Status was indeed unable to provide the citizen

with the desired information since requests were not entered into the database until they were processed.

The Registrar of Civil Status told the Québec Ombudsman that they were already aware of this problem and that measures to correct the situation would be implemented shortly. The Registrar also promised that if the citizen was charged twice for double issuance of her certificates, she would be reimbursed, as would anyone else in the same situation.

Corrections were made to the system.

Complaints office

During the 2002-2003 fiscal year, the Registrar of Civil Status established its own complaint-processing procedures: an good initiative certain to benefit citizens greatly.

However, the Québec Ombudsman found that information regarding the procedures was available only on the Registrar's Web site. Moreover, the complaints bureau telephone number indicated on the Web site was actually the Registrar of Civil Status' general number – a number without direct access to the complaints office through the automated call distribution service. Furthermore, the Québec Ombudsman noticed that Registrar personnel did not readily provide citizens with information about the complaints office. The Québec Ombudsman believes that extra effort is needed to inform citizens of this service; opening a telephone line specifically for complaints and including this number in the blue pages of the telephone directory is one recommended method of doing so.

The Québec Ombudsman would like to stress the importance of accessibility for complaints processing procedures to be efficient and credible. Such procedures must first be made public before citizens can access the service with ease, confidence and guaranteed confidentiality.

3.1.7

The Ministère des Ressources naturelles

Crucial expenses missing in compensation calculations

At the end of the 1980s, the Ministère des Ressources naturelles decided that the operation of certain public facilities at a forest site did not fall under its jurisdiction; it therefore stopped operating the cafeteria and cross-country skiing service at this location.

The Ministère stopped operating services deemed to be outside of its jurisdiction.

After several futile attempts to operate these facilities through to various partnerships, including the Société des établissements de plein air du Québec (SEPAQ), the Ministère decided to shut them down.

The site closed down.

However, for the small community nearby, the Ministère's decision spelled the loss of an important driver of the local economy. Following several discussions with municipal representatives and various other concerned citizens, the Ministère suggested that the community take care of the issue itself.

A businessman chose to take up the challenge and replaced the SEPAQ in managing the cafeteria and cross-country skiing facilities. In addition to introducing a whole new line of products, the citizen also invested heavily in developing accommodations for visitors by securing the contractual agreement of the Ministère for the use of its existing buildings on the site and renovating them at his own expense.

A citizen reopens and revamps the facilities.

In 1999, a decree then entrusted the SEPAQ with responsibility for all tourist activities, granting the SEPAQ ownership of all the buildings and moveable property on the forest site. Consequently, the citizen initiated negociations with the Ministère and the SEPAQ for compensation.

The SEPAQ takes over the operations.

The SEPAQ agreed to compensate the citizen for all moveable property for approximately of $125,000 while the Ministère agreed to pay $176,000 for expenses it would have had to bear. Yet the citizen was not satisfied with their proposal. He believed that the State facility would benefit from the products he had

The citizen felt that he was insufficiently compensated and appealed to the Québec Ombudsman.

developed, the added-value of the buildings he had renovated, the loyal patronage he had attracted and the staff he had trained at his own expense. These factors should also have been compensated which is why, in December 2001, the citizen called upon the Québec Ombudsman.

The investigation revealed that the citizen had not been granted full compensation.

The investigation revealed that the SEPAQ believed it had fully paid the citizen for all moveable property utilized for the forest site operations. The SEPAQ also contended that since it had no contractual agreements with the citizen, it was free from any other financial obligation.

As for the Ministère, it claimed to have adequately compensated the citizen and took the citizen's full discharge as proof of a finalized deal. The citizen admitted that he had signed a discharge, but it was meant to cover only the expenses paid for by the citizen, such as heating oil and certain electricity bills, which should have been covered by the Ministère.

The Ministère presented documents explaining which expenses were included in the citizen's $176,000 compensation payment. One such document referred to $98,000 compensated for the citizen's "building renovation" costs.

Considering this, the Québec Ombudman concluded that the citizen could not seek to recover more compensation for building renovations.

However, closer scrutiny of the documents showed that no interest had been added to the compensation payment even though it is expressly stipulated in the signed discharge.

Also revealed was the fact that the citizen, from 1994 to 1999, had been obliged to insure the Ministère's buildings at their full-renovated value for a total of approximately $100,000. The Québec Ombudsman believed that the government should reimburse this amount to the citizen since, under normal circumstances, the government does not insure its real estate property. Therefore, in this case, the State benefited from risk-free ownership of its land for several years.

Moreover, it was obvious that the Ministère and the SEPAQ would greatly benefit from the eco-tourist products, loyal patronage and trained staff that the citizen had established. In

fact, from 1993 to 1999, the number of cross-country skiers increased from 14,000 to 26,000 and lodging occupancy jumped from 200 to 6,000 guest-nights. In addition, the Ministère had gained approximately $250,000 in royalties from the citizen's lodging revenues and saved over $300,000 a year for the forest site's operating costs paid by the citizen.

For all of these reasons, the Québec Ombudsman believed that the Ministère had not granted fair compensation to the citizen in September 2001. In October 2002, the Québec Ombudsman suggested that the Ministère review their compensation payment, this time taking into account the numerous expenses previously omitted in the citizen's case file. The Québec Ombudsman hoped that a fair and equitable agreement could be arranged to the satisfaction of all concerned parties.

The Québec Ombudsman asked the Ministère to review the citizen's file. The citizen was granted an additional $200,000.

The Ministère granted an additional $200,000 to the citizen as a final payment.

3.1.8

The Ministère du Revenu

Fiscal Policy

A simpler procedure

A citizen, victim of a work accident, applied for assistance from the Commission de la santé et de la sécurité au travail (CSST). While her case was being reviewed, she received assistance from the Ministère de l'Emploi et de la Solidarité (MES) for more than two years. Such financial assistance is deemed to be an advance and would have to be reimbursed to the Ministère if the CSST accepted her case. At the end of 1999, the CSST ruled in her favour and granted retroactive benefits from September 1997. As a result, the CSST had to reimburse the MES any amount that the Ministère had advanced to the citizen, as well as pay the remainder to the citizen.

The CSST reimbursed the MES amounts paid while the case file was being reviewed.

The citizen also had the right to benefit from the tax credit program on the Québec sales tax (QST), a program which is managed by the Ministère du Revenu (MRQ). In the case of individuals receiving the assistance of the MES, the credit amount is included in the monthly allowances paid to them. By reimbursing to the MES the total of the advanced amount, the CSST had in fact returned to the MES a certain portion which rightfully belonged to the to the citizen.

The reimbursement contained a tax credit amount that was to go to the citizen.

The citizen then wrote to the Ministère du Revenu in order to obtain payment of the sum in question. She received no response from the Ministère and, after a month, she contacted the Québec Ombudsman.

The citizen did not receive an answer.

The Québec Ombudsman's intervention sped up the processing of the request. Furthermore, the Ministère assured the Québec Ombudsman that such a situation would not occur again. A regulatory amendment that came into effect February 1, 2003, decreed that QST credit amounts would no longer be paid to the MES in such cases where funds are advanced. As a result, citizens no longer have to put in a claim to be reimbursed.

Result of the Québec Ombudsman's intervention: one less procedure for citizens.

Questionable information

The citizen asked for a fiscal exemption covering a three-year period.

A disheartened citizen contacted the Québec Ombudsman in July 2001. The Ministère du Revenu was claiming $20,000 from the citizen because he had not filled the necessary form within the required timeframe for periods of time.

He believed that he did not have to submit another application for the other two years.

The citizen explained that he is the owner of a bakery. For 1995, the company's first year of operations, he asked to take advantage of a tax measure exempting new businesses from contributing to the Fonds des services de santé. Once granted, this exemption was to cover a three-year period. The citizen filled the form and checked the box designated for this purpose in his income tax return.

The Ministère granted the exemption for the three years in question.

The exemption was granted. Convinced that the exemption was valid for a three-year period, the citizen did not submit the form and check the appropriate box in his 1996 and 1997 tax returns. The citizen's conviction was reinforced by the fact that he had been granted a fiscal exemption for these two years, which represented an amount of about $13,500.

The Ministère changed its mind. The citizen should have resubmitted his application. The exemption is denied for the last two years.

Four years later, the citizen was greatly surprised to receive in December 2002, a notice of assessment seeking to recover the amounts, plus penalties and interest, of the previously granted exemptions for 1996 and 1997, because he had not submitted the exemption application form for these two years and checked the appropriate box in the relevant income tax returns.

The citizen appealed to the Ministère, to no avail.

In early January, 2001, the citizen opposed the claim, protesting that he had acted in all honesty and explaining that he was convinced, based on the documents issued by the Ministère itself, that the exemption had been granted for three years, and that he did not have to renew the application in 1996 and 1997.

In spite of these explanations, the Ministère stood its ground. The citizen requested that at least the interest and penalties, which amounted to $5,000, be cancelled. Another refusal.

The citizen found himself in a precarious position. The Québec Ombudsman arranged that a part of seized amount be returned to the citizen.

When the citizen appealed to the Québec Ombudsman in July 2001, the Ministère had already begun to reimburse itself: it retained the sales tax rebate due to the citizen to cover his debt. The citizen feared that he would no longer be able to pay his suppliers and would be driven into bankruptcy.

Given the serious misgivings that this case brought, the Québec Ombudsman arranged at first that $1,500, which represented the sum of the withheld sales tax rebate, be returned to the citizen, to avoid the worst.

After analysing the relevant legislation and examining the forms, the Québec Ombudsman concluded that the information released by the Ministère could have been misleading for the citizen, and that therefore the Ministère was not being reasonable. Since the citizen had fulfilled every other condition necessary to benefit from the exemption, the Québec Ombudsman recommended that the assessment be revoked.

The Québec Ombudsman concluded that the information from the Ministère was misleading.

In July 2002, the Ministère finally admitted that it was "possible that the instructions in the guides and forms at the time could have been confusing" and agreed with the Québec Ombudsman's recommendation regarding the case in question. Furthermore, the Ministère agreed to revise all similar cases brought to its attention, and ensure that the information it released from then on was accurate.

The Ministère finally agreed. The assessment was cancelled.

A citizen should have been granted the benefit of the doubt

A citizen, sole manager and owner of an auto shop, began suffering from serious health problems in 1996. Consequently, the company itself began to suffer and the citizen was forced to close the doors by the end of October 1997. No longer able to attend to his affairs, the citizen sold his auto shop at a loss and began receiving disability benefits of $516 a month from the Régie des rentes du Québec – his only source of income.

Health problems forced a citizen to shut down his business.

In 1997, finding himself in serious financial distress, the citizen was unable able to pay his accountant's fee. In response, the accountant refused to hand over the citizen's business documents needed to file the business' tax return and statement of closure. The Ministère du Revenu (MRQ), having received neither a tax return nor a statement of closure, presumed that the business was still operating and estimated its revenue. Based on those calculations, the Ministère submitted tax assessments for fiscal 1997, 1998 and 1999, seeking to recover $5,000 per fiscal year plus penalties and interest for a total of approximately $25,000.

The Ministère sent the citizen tax assessments for fiscal years 1997, 1998 et 1999.

The citizen convinced the Ministère to cancel the 1998 and 1999 assessments but not the 1997 assessment. The Ministère wanted the citizen to submit documents he could not access.

The citizen contacted the Ministère and explained that he could not obtain the necessary documents since his accountant refused to hand them over. The Ministère turned a deaf ear to the citizen's explanations. The authorities warned the citizen that if he did not procure the required documents, he would have to pay the $25,000. Doing his utmost to resolve the problem, the citizen submitted other documents such as the auto shop's sale agreement, bank statements and certificate of dissolution. The MRQ examined these documents and agreed to cancel the assessment notices for 1998 and 1999 since the business had no bank transactions after October 1997. However, since a small number of transfers and transactions had been made before this date, the Ministère decided to uphold its claim for the 1997 assessment until it received the business's statement of closure. Unable of producing this document, the citizen turned to the Québec Ombudsman for help.

It would be reasonable to say that the citizen's business had no significant financial activity in 1997.

The Québec Ombudsman studied the citizen's case file and concluded that under the circumstances, the citizen's entire situation had to be taken into account. The Québec Ombudsman also ascertained that in 1996, the Ministère du Revenu had accepted the citizen's tax return declaring no significant business revenue. In fact, the tax assessment for that year covered solely the citizen's business tax on capital. No revenue tax had been claimed. Furthermore, the Ministère was aware that the citizen's business had ceased operations in October 1997; it was therefore reasonable to believe that no significant financial activity had taken place in the few preceding months of fiscal 1997. In this particular case, the citizen should have been granted the benefit of the doubt.

The Ministère significantly reduced the tax assessment for 1997.

After numerous verifications, the Ministère finally concurred. A new tax assessment was written for 1997 based only on capital tax. The citizen had to pay a mere $585 instead of the initial $5,000.

A law interpreted too strictly

A citizen yielded ownership of a small parcel of his land for free.

A citizen acquired a sizeable expanse of land and a residence on property neighbouring his mother's property. When the citizen's mother decided to sell her property, she noticed that a small portion of her land overlapped onto her son's property. In order to straighten out the land titles and facilitate the sale of his mother's property, the citizen agreed to yield ownership of this parcel of land for free and, following the notary's advice, transferred it directly to the buyer.

When the citizen decided to sell his own property, he discovered that, being quite large, its size was impeding the sale. The citizen therefore decided to sell a portion of his land to lower the cost of the remainder of the property and attract a wider group of potential buyers. Shortly after, a buyer was found for this portion of land.

He then divided his property into two plots.

The citizen asked a tax specialist and the Ministère du Revenu (MRQ) for information regarding taxes on the sale. They informed him that property sold for personal use is usually exempt from taxation, although there are certain exceptions to this rule. One such exception stipulates that if the property had been split into more than two plots, tax exemptions are not permitted. This exception is generally used to tax commercial transactions.

The Ministère regarded the property as having been split into three plots. The citizen was therefore required to pay taxes on the sale of one portion of his land.

The Ministère claimed that the citizen's transaction should be taxed since the property had been split in three: the small parcel of land freely yielded to the purchaser of his mother's land, the plot for sale and the remainder of the property.

The Québec Ombudsman contended that the Ministère's interpretation of the law in this particular case was unreasonable because the first division should not have been taken into account. For one, the parcel of land was miniscule. For another, the citizen was not compensated for transferring ownership of this parcel of land since it was done purely to straighten out the land titles. For these reasons, the first transaction was not a true separation or subdivision of land in terms of tax legislation.

The Québec Ombudsman contended that the Ministère's interpretation of the law was not reasonable.

The Ministère agreed to disregard the first division and consider the property as having been divided into only two plots. The transaction was therefore eligible for a tax exemption and the Ministère reimbursed $7,000 to the citizen.

The Ministère reimburses the citizen $7,000 for taxes paid.

Strict application of regulations compromised a citizen's right to a deduction

A citizen closed down his business in 1997. In early 2000, the citizen submitted his tax returns for 1996 through to 1999 and claimed $44,000 for losses incurred in business investments in fiscal 1997. Such losses are deductible from all sources of revenue. Since the citizen's losses exceeded his total revenue in

A citizen believed he had the right to claim business investment losses on his tax return.

1997, he lawfully deducted the remaining losses from his taxable income for fiscal 1996, 1998 and 1999.

The citizen's losses were considered capital losses.

However, the Ministère du Revenu saw the situation differently. In February 2001, the Ministère declared that the citizen's losses were capital losses and therefore only deductible from capital gains. As the citizen had not earned capital gains in 1997, he could not deduct his losses for that fiscal year, nor could he apply them to the other years. The Ministère consequently demanded $3,698 in taxes for the four years in question.

The Ministère upheld its decision and the citizen capitulated.

Dissatisfied with the Ministère's decision, the citizen filed a notice of objection, only to be informed on July 17, 2001 that the Ministère's decision would be upheld since the citizen's 1997 losses were deemed to be capital losses. The citizen conceded.

The citizen later claimed depreciation deductions.

In order to reduce his taxable income for those four years, the citizen amended his tax return in August 2001 to claim the depreciation on a rental building he owned. He had not done so when he first submitted his tax return since he believed at the time that he had no taxes to pay.

The Ministère refused his claim since his request was submitted after the deadline.

However, in February 2002, the Ministère refused his claim based on the rule stipulating that requests for the review of depreciation claims cannot be accepted unless they are submitted within 90 days of receiving the tax assessment. Since as the citizen had originally filed a notice of objection and had waited four months for the Ministère's decision, it was clearly impossible for the citizen to respect this deadline. The citizen appealed to the Québec Ombudsman.

The bona fide regulations were detrimental to the citizen.

The investigation revealed that the 90-day deadline for requests to review depreciation claims was indeed a bonafide regulation, as was the deadline for submitting notices of objection. Yet no provisions seemed to exist for citizens who wished to adjust their depreciation claim once their notice of objection is refused. The Québec Ombudsman realized that citizens could lose the right to make amendments to their tax returns regarding depreciation simply because they had submitted an objection.

Therefore, the Québec Ombudsman intervened, contacting the Ministère to suggest that they disregard the 90-day deadline for such situations.

Following the Québec Ombudsman's recommendation, the Ministère examined its administrative procedures and realized that revision requests under such circumstances are usually accepted. Moreover, the Ministère noticed that the citizen had clearly indicated on the notice of objection why he had not originally claimed a depreciation deduction: he did not think he would have taxes to pay since he was under the belief that the business investment losses he incurred could be deducted from his tax return.

The Ministère's usual procedures were not followed in this case.

When these facts were brought to light, the Ministère agreed to examine the citizen's request to review his depreciation claim and eventually concluded that the citizen had no taxes to pay for those years.

Upon further examination, the taxes claimed are cancelled.

A citizen refused to be tagged with a number

In 1998 a citizen appealed to the Québec Ombudsman after the Ministère du Revenu refused to grant him a shelter allowance for 1997 since the citizen did not have a social insurance number.

The Ministère refused to grant a citizen a shelter allowance.

To qualify for the Shelter Allowance program, citizens must possess a social insurance number and include this number on the application form.

The citizen did not have a social insurance number.

Naturally, the Québec Ombudsman's first response was to encourage the citizen to apply for a social insurance number, a procedure quite straightforward and simple. However, the citizen refused on the basis of "strong beliefs". The citizen's reaction prompted the Québec Ombudsman to examine the case more closely.

The citizen refused to apply for one.

The Québec Ombudsman discovered that the citizen had never been employed. He received social assistance with an added allowance for severely limited capacity for employment. Furthermore, the citizen suffered from a serious neurotic disorder and had spent time in various psychiatric institutions. Obviously, the citizen's case was uncommon and required special attention.

Despite the citizen's refusal, the Québec Ombudsman believes that the citizen's request should be considered.

The Québec Ombudsman also discovered that the Ministère had previously noted the unusual nature of the citizen's case following a decision made by the Deputy Minister to grant the

citizen a shelter allowance despite his lack of a social insurance number. At that time, the Ministère had assigned the citizen an internal identification number (NOID).

The citizen fulfilled all the other criteria and the spirit of the law would be respected.

The Québec Ombudsman noted that the citizen fulfilled all the financial criteria for shelter allowance eligibility. Moreover, the regulation requiring social insurance numbers to benefit from these allowances was surely written purely for citizen identification purposes. Seeing as how the Ministère had already assigned an identification number to the citizen, there could be no error as to his identity if they agreed to grant him the allowance and the spirit of the law would be upheld.

The allowance is granted at last.

Considering the citizen's special circumstances, the Québec Ombudsman advised the Ministère to grant the citizen the shelter allowance. After numerous rejected requests, the Québec Ombudsman's recommendations were finally accepted in January 2002 after a letter to the Deputy Minister was sent. The citizen received $7,600 in retroactive allowance payments for 1997 through 2001.

Ten-month delay to correct an error

August
A citizen notified the Ministère of an error and was promised that it would be corrected.

A citizen received a tax assessment in July 2001 seeking to recover taxes on benefits granted to the citizen for the use of two business vehicles. However, the citizen informed the Ministère that he possessed only one vehicle.

In August 2001, the auditor handling the case contacted the citizen and told him that the necessary corrections would be made and a new tax assessment would soon be sent.

October
The Ministère demanded payment anyway.

Then, in October 2001, the Ministère's collection department sent the citizen a notice demanding the original payment.

A new promise to correct the error was given.

Understandably, the citizen was surprised and contacted the auditor to be informed that his case file had still not been processed and that certain documents were missing; the citizen personally delivered these documents to the agent on October 31, 2001.

February
The correction was still not made. The citizen was obliged to pay a certain amount.

Yet in February 2002, the citizen received a "final notice of payment" from the collection department. The citizen explained his situation but in order to avoid being penalized,

the citizen paid several monthly instalments equal to a quarter of the alleged amount due.

Meanwhile, Revenue Canada also sent the citizen a tax assessment with the same error. The citizen contacted them to explain that he was waiting for corrections to be made by the Ministère du Revenu and that, as the auditor had agreed, the Ministère would fax Revenue Canada a copy of the document as soon as it was corrected. Yet two weeks later, the citizen contacted Revenue Canada and discovered that the Ministère had still not sent them the corrections. The citizen attempted to contact the auditor several times to no avail and subsequent attempts to reach the auditor's immediate supervisor were also futile.

Revenue Canada entered the scene.

Frustrated, the citizen called upon the Québec Ombudsman for help in June 2002.

June
The Québec Ombudsman intervened and found that pure negligence was to blame.

The Ministère was incapable of justifying its delay in processing the citizen's file. Moreover, the Ministère had failed to notify the collection department that the citizen's file was being corrected and to interrupt any collection measures. The Québec Ombudsman surmised that pure and simple negligence on the part of the Ministère was the cause of all the citizen's problems.

Thankfully, as soon as the Québec Ombudsman fully explained the situation to the Ministère, it jumped into action. A supervisor contacted the citizen that very day and the long awaited corrections were finally made. Soon thereafter, the Ministère issued a new tax assessment and sent a copy to Revenue Canada.

The situation is finally corrected.

Redundant requests for information

A citizen received a tax assessment from Revenue Canada for undeclared wages for fiscal 2000 and contacted the Ministère du Revenu du Québec (MRQ) to inform them of the situation.

A citizen informed the Ministère of undeclared income.

Consequently, the Ministère sent the citizen a tax assessment demanding taxes on the income as well as payment of amounts which should have been deducted from his salary. The citizen refused to pay the latter amounts as he was convinced that his ex-employer had already deducted them from his pay. Unfortunately, the citizen had not kept his pay stubs or any other document substantiating his statements. Moreover, the

The Ministère demanded proof that deductions had been collected by the citizen's ex-employer. The ex-employer is nowhere to be found.

citizen had lost contact with his ex-employer after the latter declared bankruptcy. At long last, the citizen found proof on the tax assessment issued by the federal government which clearly indicated that income tax deductions had indeed been withheld from the citizen's pay. Yet the MRQ replied that the federal tax assessments have no bearing on those issued by Quebec and cannot be accepted as proof. The onus to find the required financial statement fell on the citizen's shoulders.

After numerous inconclusive attempts to track down his ex-employer, the citizen asked the Ministère to give him the man's contact information. The administrative authorities refused because of confidentiality regulations, at which point the citizen appealed to the Quebec Ombudsman for help.

The Ministère's requirements were not reasonable.

The Quebec Ombudsman verified the facts, found that they concurred with the citizen's account of things and concluded that the Ministère had not acted reasonably on two accounts.

Firstly, under the circumstances, the citizen should have been granted the benefit of the doubt since his ex-employer was untraceable even after numerous attempts. It was highly probable that the employer had paid the MRQ the required amounts, as he had done so for the federal ministry.

Secondly, while the administrative authorities could not disclose any information about the citizen's ex-employer, nothing prevented them from verifying for themselves whether the deductions had been made or not.

The Ministère realized that it had the required information all along. Corrections were made to the citizen's assessment.

In response to the Quebec Ombudsman's remarks, the Ministère took action. It examined the ex-employer's file and discovered that all the lawful deductions had indeed been withheld from the citizen's salary and sent to the Ministère. Consequently, the citizen's tax assessment was duly corrected. If only the Ministère had acted this way from the beginning, so many efforts would have been spared.

Collecting support payments

After the Quebec Ombudsman issued two reports focusing on problems with the collection of support payments, efforts were made to improve the system. However, certain problems persist

such as deficiencies in the quality of the information provided to citizens. More often than not, complaints stem from incomplete or inaccurate information which only serve to confound citizens. Such was the case of one citizen who allegedly owed amounts for support payments he was certain he had paid. The investigation revealed that amounts were owed but for a different period during which the Ministère had made "advance" payments without notifying the concerned parties. The Québec Ombudsman intervened, demanding that the Ministère reissue a new claim clearly explaining the reasons for the claim.

The Québec Ombudsman also noticed that the "relevé de compte" [account statement] form was still the source of problems. It was often incomprehensible, particularly when allowance amounts varied or when collection was irregular. In addition, errors were difficult to pick out on the form as one citizen confirmed after attempting to justify his calculations by submitting proof of his payments to the Ministère. After close scrutiny of the citizen's file and new calculations, the Québec Ombudsman was able to convince the Ministère to refund the citizen more than one thousand dollars in overpayments. The entire process took three years to conclude.

There are also serious deficiencies with the way difficult-to-collect case files are processed, particularly when the debtors are uncooperative. The Québec Ombudsman believes that the Ministère does not always use all the means at its disposal to act effectively, especially when debtors attempt to hide their income and assets by working under the table or transferring considerable amounts to third parties.

Numerous other special situations also required the Québec Ombudsman's attention last year. The Québec Ombudsman's ultimate goal is to rectify individual problems and improve the collection system as a whole.

A delayed procedure proves costly

Support payments were interrupted, while the debtor received employment insurance benefits.

For over three months, a citizen did not receive the support payments to which she was entitled. However, she knew that the debtor received employment insurance benefits. The Ministère was informed of this in December. In March, the citizen requested the intervention of the Québec Ombudsman.

The Ministère neglected to carry out garnishment procedures.

The investigation revealed that the Ministère had not taken any steps towards collecting the debtor's benefits after he had stopped working, though garnishment procedures would have made it possible to deduct the amounts owed directly from his employment insurance benefits.

Steps were taken. The delay cost the citizen $800.

The Ministère carried out the necessary procedures at the Québec Ombudsman's instigation. However, due to delays in the judicial process, it was only seven weeks later that the Ministère could actually garnish payments due to the citizen, from the debtor's regular employment insurance benefits. However, the Ministère could not recover the payments which should have been made the first weeks during which the debtor received employment insurance benefits. Therefore, $800 that could have been garnished was added to the support payer's debt to his spouse. The Ministère's initial negligence proved to be costly for her.

One must also trace the debtor

The citizen had not received support payments for three years. She was told to search for the debtor herself.

Over the last three years, a support creditor received only three months' worth of support payments. The arrears amounted to nearly $18,000. She appealed to the Ministère du Revenu, only to be told that the debtor was nowhere to be found and that she had to search for him herself! The citizen had an idea of her ex-husband's field of work, but she obviously lacked the means to hire a private investigator. Therefore, the citizen appealed to the Québec Ombudsman.

It was the Ministère's duty to act upon the matter, and so it did. The citizen started receiving support payments again.

In the Québec Ombudsman's opinion, it was the Ministère's duty to use all possible means of verification at its disposal to find the debtor. And so it did: the Ministère performed the necessary searches and found the debtor's address, as well as his employer's. The Ministère then garnished the debtor's salary. The support payments resumed and arrears are in the process of being paid.

For equitable considerations, the Ministère had to suspend the collection of support payments

A citizen made support payments to his ex-spouse for the care of his children who were living with her at the time. When the

Youth Court granted custody of the children to the father, he believed that he no longer had to pay support. However, after noticing that the payments were still being deducted from his salary, he contacted the Ministère du Revenu, where he learned that the support payments remained due until the Superior Court ruled in favour of their suspension or annulment. The citizen called upon the Québec Ombudsman.

A father regained custody of his children. The Ministère continued to collect support payments from him, sending them to the mother for the care of their children.

At first, the Québec Ombudsman confirmed that the Ministère's stance was consistent with the law. Consequently, the Québec Ombudsman advised the citizen to contact a lawyer immediately. A few days later, the citizen informed the Québec Ombudsman that his lawyer was about to file a procedure seeking, among other things, the annulment of his support payments.

Only a Superior Court ruling could cancel the obligation to pay support.

During discussions with the citizen and the Ministère, the Québec Ombudsman discovered that the citizen's ex-wife was a social welfare recipient. In fact, given the circumstances, the citizen's real creditor was the Ministère de l'Emploi et de la Solidarité (MES), since the Ministère was fully subrogated to the ex-wife's rights. Therefore, the payments made to the MRQ were entirely transferred to the MES as reimbursement for the assistance his ex-wife received.

The Ministère de l'Emploi et de la Solidarité was the citizen's real creditor.

The Québec Ombudsman noticed that in this case, there was no risk of injury to the ex-wife, even if the support payments were interrupted before the court declared its verdict. As for the MES, it was not opposed to suspending the collection. Furthermore, interrupting the payment collection was a fair and just action since the father now had custody of his children.

There was no risk of injury to the ex-wife. In all fairness to the citizen, the Ministère agreed to suspend collections until a court verdict.

The Québec Ombudsman informed the Ministère du Revenu of this situation. The Ministère acknowledged it and suspended collection until the court hearing, where the support payments were finally cancelled, effective from the date the father was granted custody of his children. He was also reimbursed for sums paid after he had regained full custody of the children.

The judgment was clear and left no room for interpretation

In the spring of 2001, a judgment modified the amounts that a support payer was required to give to his ex-wife, stipulating that the citizen was not required to make support payments

The citizen was not obliged to make support payments while unemployed.

while unemployed, as was the case when the judgment was passed.

The administrative authorities demand that support payments be made during the citizen's second period of unemployment.

Consequently, the Ministère stopped demanding support payments. At the beginning of July, the citizen began working and therefore started making support payments again as required. In early September, the citizen found himself out of work again so he informed the Ministère, only to be told that the support payments had to be made regardless of his new financial situation. By the time the citizen contacted the Québec Ombudsman, the Ministère was demanding $1,900 in back payments.

The administrative authorities sympathized with the creditor.

The Québec Ombudsman asked the civil servants in charge of the citizen's case file why they were demanding support payments despite the spring judgment which had ruled otherwise. The civil servants responded by arguing that the ruling had not stipulated that the citizen was allowed more than one cessation of work. The ruling could therefore be interpreted as saying that the citizen's support payment exemption covered only his spring 2001 work interruption and not his second work interruption in September during which he was still required to make payments. This interpretation was supported by the administrative authority's general tendency to side with support payment creditors.

Nevertheless, the interpretation of the law was completely unreasonable.

However, once the Québec Ombudsman studied the wording of the judgment, it ascertained that, in fact, said ruling stated in clear and unambiguous terms that support payments were to cease whenever the citizen was not working. Administrative authorities could not interpret the ruling otherwise, regardless of the sympathy they felt for the creditor.

The Ministère agreed to respect the terms of the judgment.

The Québec Ombudsman asked the Ministère to respect the terms of the ruling and they agreed, cancelling their claim for $1,900 in back payments. From then on, the citizen would not have to make support payments during periods of unemployment.

Take enough but not too much

The citizen had to make support payments and student loan installments.

A citizen made his support payments with regularity, as payments were deducted directly from his income, leaving no outstanding debt in this matter. However, the citizen was indebted to the Ministère de l'Éducation (MEQ) for loans issued through the Student Financial Assistance Program. After obtaining a ruling

ordering the citizen to pay this loan, the MEQ requested the garnishment of the citizen's wages.

Following the MEQ's request, the Ministère du Revenu seized 50% of the citizen's gross income, to ensure that the support creditor would continue to receive her payments and that the MEQ would receive its loan installments. However, this left the citizen unable to meet his other day-to-day expenses. The citizen tried to convince the Ministère to reduce the amount of income garnished, yet his attempts were in vain. The citizen therefore turned to the Québec Ombudsman for help.

The Ministère garnished 50% of the citizen's salary.

Under such circumstances, the law does permit the Ministère de Revenu to garnish wages to a maximum of 50% of a citizen's gross income. Nevertheless, the Québec Ombudsman calculated that by seizing only 37% of the citizen's gross income, both the creditor's support payments and the Ministère de l'Éducation's loan installments could lawfully be met. In the Québec Ombudsman's opinion, the amount of wages garnished from this citizen's salary was unreasonable.

The amount garnished was too high.

The Québec Ombudsman contacted the administrative authorities to demand that the amount garnished from the citizen's income not exceed what was needed. It should be noted that the Québec Ombudsman was obliged to act in similar cases several times throughout the year. The Ministère agreed to make the recommended modifications in the case of this citizen, as well as for the others.

The amount was reduced.

However, the Québec Ombudsman sincerely hopes that the Ministère will not wait for citizens' complaints or the Québec Ombudsman's intervention to avoid similar situations in the future. It trusts that a clear guideline will be established that will ensure that only amounts absolutely necessary be garnished. The Québec Ombudsman will follow the situation closely.

The Ministère should never take more than is necessary.

3.1.9

The Ministère de la Sécurité publique

Correctional services

During the 2002-2003 fiscal year, discussions between correctional services representatives and the Québec Ombudsman in a view to ensure follow up on recommendations made in the Québec Ombudsman's 1999 special report. In July 2002, the Québec Ombudsman drafted an update of the action plan adopted by the Ministère de la Sécurité publique.

The Ministere received this update on its action plan in January of 2003. Of the 46 recommendations issued, 21 were implemented with complete success and 11 with partial success; while the results of the remaining 14 recommendations did not pass muster. Thanks to this update, it was possible to see that the measures adopted had improved the system significantly.

For example, in regards to disciplinary measures, detention centers stopped automatically transferring prisoners into sections other than those in which they were originally incarcerated after serving out a penalty. Moreover, from now on, prisoners are to be notified within 8 working hours of decisions under administrative revision. With respect to administrative segregation, a maximum of 72 hours is now legally enforced for prisoners suspected of smuggling illegal substances into the detention center.

More measures should be taken once the new Act respecting the Québec Correctional System, along with its regulations and guidelines, come into force. Once they do, the conditions for granting day passes, be it for participation in reintegration, spiritual or humanitarian activities, will be set out in detail.

This Bill was tabled during the National Assembly in May of 2002. Having already submitted her recommendations to the Commission des institutions de l'Assemblée nationale after the draft bill was disclosed, the Québec Ombudsman shared her comments with the minister in charge at the end of May. The Québec Ombudsman noticed that, for the most part, the

modifications had indeed addressed the problems she had outlined in her February report and they imported significant improvements to the system as a whole. Nonetheless, the Québec Ombudsman is concerned with the delay in implementing this Act, adopted over a year ago.

Unresolved problems

Tardy evaluations delay an inmate's right to temporary leave

Anyone sentenced to more than six months in prison must be given a "personalized integration plan" aimed at facilitating the person's reintegration into society. Furthermore, he must be evaluated within thirty days of his admission to the detention center in order to establish the interventions necessary for his rehabilitation. There are two types of evaluations: a summary evaluation and an in-depth evaluation. Any inmate serving a sentence of six months or longer can request a day pass for reintegration activities when two conditions are met: the in-depth evaluation must be completed and a sixth of the inmate's sentence must be served. To request a conditional discharge, the prisoner must have served at least a third of his or her sentence. If the evaluations are not completed by correctional services personnel within the prescribed deadlines, the rights of inmates are violated. Unfortunately, this occurs far too often.

The evaluation report was late, therefore the citizen could not request a temporary leave.

An inmate contacted the Québec Ombudsman on May 9, 2002. He told that in two days, on May 11, he will have served a sixth of his sentence. The citizen had been issued a positive summary report early in his confinement, but the in-depth report, written by the citizen's parole officer, was delayed due to a tardy psychosocial assessment. The citizen's request for temporary leave would therefore be delayed.

The Québec Ombudsman sped up the process.

The investigation revealed that delays in the production of these reports were due to the detention centers' lack of resources.

Thanks to the Québec Ombudsman's intervention, the procedure was sped up. On May 21, the citizen was granted a day pass. The Québec Ombudsman hopes that with the enactment of the

new Act and increased human resources, problems such as these will be a thing of the past.

Confinement conditions: recurrent problems

The Québec Ombudsman has focused on several cases of what it considers abusive confinement where inmates are granted only a single hour of physical outdoor exercise per day. This was the situation for so-called "protected" prisoners in the Trois-Rivières detention center.

Some inmates request protection within prison walls.

Some inmates feel that their safety within a detention center is compromised and therefore request special protection, due to the nature of their crime (eg. sexual assault) or out of fear of falling victim to violence between inmates. Prisoners who make such requests are transferred to a separate, protected section of the prison.

Inmates confined to their cells 23 hours a day in the protected section.

In October 2001, inmates confined to the protected section in the Trois-Rivières detention center were informed that from then on, they would be kept in lock-up 23 hours a day for the remainder of their sentence. The authorities justified these confinement measures, on the grounds of "operations management" issues

Space is limited in the protected section to the point that cells designed for one inmate now hold two and cells meant to confine two people are crammed with three. At times, some prisoners must even spend the night in the admissions area.

The Québec Ombudsman believed that imposing such living conditions on inmates was unacceptable and curtailed unnecessarily prisoners' residual freedom. In fact, the Regulation respecting houses of detention stipulates that such lengths of confinement should only be enforced as a disciplinary measure.

These measures were taken to discourage unnecessary requests for protection.

However, detention center authorities initially disagreed with the Québec Ombudsman. In their opinion, chronic overcrowding in the protected section justified such measures because they discouraged inmates from requesting protection unnecessarily.

Nonetheless, the Québec Ombudsman found this argument unacceptable. Seeing as how overcrowding was a problem not

only in the Trois-Rivières detention center, but in several others around the province as well, the Québec Ombudsman decided that the situation needed to be addressed and improved.

Regulation standards are now respected.

Following the Québec Ombudsman's intervention, management of the Trois-Rivières detention center reduced lock-up to 20 hours per day. It is only in July 2002 that such excessive confinement measures were completely abolished and that standard regulations were reimplemented.

Yet another example

Another example of abusive confinement.

Another case of excessive confinement prompted the Québec Ombudsman's intervention last year when a woman incarcerated in the Tanguay prison claimed that she was obliged to return to her cell several times a day for periods of up to three hours. The authorities explained that this unusual confinement was due to the fact that the woman's cell was located in the same section as the solitary confinement cells. Since inmates in solitary confinement are forbidden contact with other inmates, regular inmates in the section were forced into lock-up whenever they entered or exited their cells. The citizen, considering that such measures were a violation of her residual freedom, contacted the Québec Ombudsman for help.

The investigation revealed that though inmates in the woman's section were normally permitted complete freedom of movement within that zone, however this freedom was restricted at times by their proximity to the solitary confinement cells.

New procedures were adopted.

The Québec Ombudsman discussed the issue with the correctional institution director, after which new procedures modifying the circulation of inmates in solitary confinement were implemented, the regular inmates were guaranteed complete freedom of movement except for a few minutes at a time.

Inventory and compensation for the loss of personal effects.

Article 10 of the Regulation respecting houses of detention stipulates that upon admission to a detention center, an inventory of the inmate's personal effects "must be made by an officer and

signed by the imprisoned person". The Québec Ombudsman had previously noted serious deficiencies in this regard and had drawn up a specific recommendation aimed at upholding this regulation. Yet the problem remains; representatives from the Ministère claimed that houses of detention had more pressing priorities and could not commit the necessary resources to ensure proper inventory of the inmates' personal effects. In January 2003, the Québec Ombudsman asked the administrative authorities to rectify the situation and submitted several recommendations to modify the current procedures. Houses of detention with a high admission rate, such as Rivière-des-Prairies or Saint-Jérôme, were most in need of improvement; though it must be noted that they are making serious efforts to meet regulation standards.

Such deficiencies in the system make it all the more difficult to judge the truth of inmates' claims regarding lost or stolen personal effects and calculate the value of the lost items. Moreover, the system for reimbursing inmates' lost items is also riddled with problems, as the following example demonstrates.

An inmate claimed compensation for the loss of his personal effects in June of 2002.

An inmate's personal effects were lost at the Bordeaux detention center, though the citizen did not notice the loss until after he had been transferred to the Rivière-des-Prairies facility. The inmate notified the authorities in early June 2002 and repeatedly requested $2,500 in compensation. The authorities responded by declaring that "his request was being examined and would be processed within two weeks". No further along two weeks later, the citizen appealed to the Québec Ombudsman.

From June to November, the citizen's case file was lost, then found and then tossed around.

The Québec Ombudsman had great difficulty in obtaining any information concerning the inmate's claim from the Rivière-des-Prairies detention center and surmised that prison personnel are not well informed as to procedures for lost or stolen effects. It was not until August 2002 that the Director of Administrative Services informed the Québec Ombudsman that the citizen's case file had been transferred to Québec due to the high amount of the claim. Procedures dictate that when the compensation claim exceeds $1,000, a review board must examine the file. However, when the Québec Ombudsman contacted the review board, they informed him that the citizen's file had been returned to Rivière-des-Prairies because it was incomplete. The file remained lost until early October when it was finally resent to the review board to be analysed during their session on

October 21. By November 18, the citizen still had not received confirmation of whether his claim had been processed or not. It was eventually discovered that since some of the review board members had been absent, the board had cancelled its October 21 session: the citizen's file was not processed until November 27.

December: an offer was made.
January: the inmate refused the offer and the entire process began anew.

On December 11, the board proposed to compensate the inmate $125. The citizen refused the offer and submitted a counter-proposal on January 5, only to wait a month with no response. The employee handling the citizen's case file informed him that the review board, whose next session was not until February 20, 2003, must examine the claim again. At the end of this fiscal year, the inmate's case file still had not been resolved.

Civil protection

Damaged property outside the flood zone

A citizen requested compensation after a flood partially destroyed her property.

Following the torrential rains that occurred in 1996 in the Saguenay region as well as several other regions of Quebec, the government implemented a compensation program for citizens who had suffered significant financial losses for damage to their personal property during the floods. The Ministère de la Sécurité publique was requested to manage the program.

A citizen requested compensation after her house was deemed to be a total loss, while her damaged moveable property lost forty percent of its total worth and her land was partially destroyed by the flood. The Ministère reviewed the file and granted the citizen satisfactory compensation for the loss of her house and moveable property.

The Ministère refused to award compensation for the citizen's land because she had not assigned her property to the municipality.

However, the Ministère refused to grant any compensation whatsoever for the partial destruction of the citizen's land on grounds that she had refused to transfer ownership of her land to the municipality – the one crucial condition for compensation as decreed in the program's regulations. The citizen appealed to the program's review board, but the initial decision was upheld. She then turned to the Québec Ombudsman for help.

The Québec Ombudsman first noted that the decree truly specified that owners of partially-destroyed land had to surrender their land to the municipality in order to be granted compensation. This provision was indeed true, although it was applicable only if the property fell within the boundaries of a pre-determined flood zone. The Québec Ombudsman noticed that the Ministère had classified the citizen's land as falling inside this zone.

However, upon closer examination of the woman's file, the Québec Ombudsman ascertained that the municipality had modified its zoning regulations in 1996, thereby excluding the citizen's land from the flood zone. These modifications were forwarded to the Ministère in 1997 while the woman's file was being processed. For reasons unknown, however, the administrative authorities did not take them into account.

In fact, the woman was not required to assign her property since it was located outside the flood zone.

The Québec argued that of this provision could not be grounds to refuse the citizen compensation for the partial destruction of her property. The Ministère complied and awarded the citizen an additional $900.

The citizen was awarded additional compensation.

3.1.10

The Ministère des Transports

The whole should at least include the sum of all its parts

In January 2002, representatives from the Ministère des Transports contacted an elderly couple to notify them that a bridge near their residence would be undergoing reconstruction. On January 15, the couple negotiated and signed a draft agreement with a certified appraiser form the Ministère for $5,000, compensating inconveniences they would suffer during the construction work.

A couple was granted an initial compensation of $5,000.

Then, on May 29, 2002, only days before construction was to begin, the couple received a notice from the Ministère demanding them to vacate their premises on June 3 and notifying the couple that they would not be able to enter their residence before construction was finished, approximately 20 weeks later. The couple immediately contacted the Ministère, declaring that they had never agreed to leave their home. Under the circumstances, the initial compensation amount was no longer sufficient since their negotiations had never taken temporary lodging costs into consideration.

The citizens later learned that they had to vacate their property for 20 weeks.

The Ministère's appraiser met with the citizens again and offered to add $3,000 to the original amount, for a total compensation of $8,000 expected to cover a large range of expenses from temporary lodging to additional transportation costs, plus land restoration expenses, the planting of new trees, etc.

A new agreement increased their compensation to $8,000.

The couple signed the new agreement, though their doubts regarding the new compensation amount prompted the woman to contact the Québec Ombudsman for advice. The citizen believed that the Ministère did not consider all the expenses for adequate compensation. Despite the additional $3,000, the couple felt that the Ministère's offer was insufficient and did not cover all the expenses that their temporary absence and future work to restore their property to its original state would incur. As the couple had never had to deal with government administration previously, they simply accepted what the Ministère had offered them, believing that negotiation was not an option.

The couple harboured doubts about the agreement and contacted the Québec Ombudsman.

The compensation calculated covered broad categories of expenses. The details were missing.

Upon closer scrutiny of the actual agreements and documents provided by the citizens, the Québec Ombudsman noticed that it was impossible to deduce what amount had been granted for each compensated expense because only amounts covering broad categories were available. The Québec Ombudsman concluded that due to the lack of clear breakdown, estimating the fairness of the compensation provided was not possible. Consequently, the Québec Ombudsman felt that intervention was needed.

Upon questioning, the appraiser in charge of the couple's case file declared, without further detail, that the amount was reasonable since the couple had freely consented to the compensation offered which, in his opinion, sufficiently covered the couple's present and future expenses. Nevertheless, the Québec Ombudsman requested a new, more thorough evaluation from the Ministère.

A new evaluation was written. The citizens were awarded $10,000, and the Ministère covered the entire cost of restoring their property.

The Ministère assigned a new appraiser to the case and a more detailed evaluation was prepared. After several meetings, the two parties finally came to an agreement: the couple's expenses for temporary absence from their residence were estimated to be $10,000. Furthermore, the Ministère agreed to restore the couple's property to its original state at its own cost and manpower, thereby saving the couple the hassle of finding and supervising a contractor to do the work. The Québec Ombudsman was later discovered that the Ministère incurred approximately $12,500 for the restoration of the couple's property.

Occasional use is sufficient reason to keep a path open to the public

A couple claimed ownership of a path and closed it to public access.

Several years ago, a couple bought several adjacent properties bordering a path. Believing that the path was on their property, the couple fenced off the path, provoking protests from citizens in the municipality since the path was regularly used by the townspeople to access the nearby bike path and forest. Initially, the citizens of this town simply bypassed the fence and continued to use the path but before long the couple, determined to keep the public off their private property, refused access to the path to everyone but a select, authorized few.

The municipal council attempted in vain to reopen the path to the public but the couple maintained their position regarding the path since, they argued, it was an old colonization road now on their property. Indeed, the law states that if a public path is no longer used, the owners of the land on which it is located are to be granted possession of the path. However, if the path is still in use, it belongs to the State under the control of the Ministère des Transports.

They believed that the path was an old colonization road, no longer in use.

A concerned citizen and the municipal council contacted the Ministère des Transports to have the situation straightened out. The Ministère declared that the path was truly an old settlement road, but since it was not used frequently enough, it does not meet the criteria for public usage as decreed in the Act respecting roads.

A concerned citizen and the municipal council appealed, in vain, to the Ministère des Transports.

The Québec Ombudsman, contacted by the concerned citizen, examined the case and the relevant documents and concluded that the Ministère's decision was questionable since it had determined ownership of the path principally based on the path's frequency of use. The Québec Ombudsman believed that the Ministère's interpretation for determining how frequently the path was used had been overly restrictive. The Ministère had decided that occasional use was insufficient and did not meet the Act's requirements, despite the fact that the Act respecting roads simply states that the path must be used, without actually defining the precise frequency required.

The Ministère's interpretation of the law was too restrictive.

The Ministère sought legal advice and finally concurred with the Québec Ombudsman. The necessary steps were taken shortly thereafter to have the couple remove the fence and reopen the path for public usage.

The situation was corrected.

3.2

Government agencies

3.2.1

The Commission de la santé et de la sécurité du travail

Worker compensation

Despite supporting jurisprudence, the CSST refused a worker's claim

In May of 1998, a worker submitted a claim, requesting compensation for a work-related pulmonary illness. The CSST submitted the case file to a special committee of pneumologists for examination. The committee denied compensation, but specified that the worker was to be re-examined in two years' time. After futile attempts to challenge this decision, the citizen notified the Commission des lésions professionnelles (CLP) of his situation.

A worker's request for compensation was denied.

As required, the committee of pneumologists re-examined the citizen in March of 2002, yet this time, they diagnosed him with asbestosis. The CSST accepted the worker's request for compensation in July and granted him benefits for physical injury; as for the CLP, they decided that the citizen truly was the victim of a work-related illness and thereby had the right to retroactive compensation as of May 1998.

Later, the CSST and CLP both acknowledged that the worker was eligible for payment of income compensation.

However, in January of 2000, the CSST refused to grant the citizen an Income Replacement Indemnity, arguing that the citizen had been retired since 1997. The worker therefore called upon the Québec Ombudsman for help.

Yet the CSST denied the worker compensation because he was retired.

The Québec Ombudsman felt that since the worker had taken retirement, the CSST could not deny the citizen right to this compensation for its very objective is to make up for the loss of one's ability to gain income, and not the loss income itself. Jurisprudence on this topic is both clear and abundant.

The Law, well understood by the agency, runs contrary to the agency's decision.

The Québec Ombudsman also discovered, in the course of its investigation, that the CSST knew full well of the CLP's position on the issue; nonetheless, the CSST stubbornly continued to

refuse workers' claims, obliging them to take their cases to the CLP for a positive outcome. The Québec Ombudsman considered this way of doing things both unreasonable and abusive.

Compensation was eventually granted. The worker received $126,000 in back payments. The CSST should modify its policies.

Finally, the CSST concurred that the citizen should rightfully receive an Income Replacement Indemnity; it is now making these payments regularly in addition to granting the citizen $126,000 in back payments. The Québec Ombudsman also requested the CSST to comply with existing jurisprudence and discontinue its policy of refusing such claims in order to avoid repetition of similar situations.

Victims of occupational accidents more vulnerable

The CSST attempted to suspend compensation granted by the CLP.

In August of 2002, the Commission des lésions professionnelles (CLP) made a ruling on a citizen's case file, granting her the right to compensation. However, in mid-September, the CSST submitted two motions to the CLP, one opposing said ruling and the other requesting suspension of the woman's compensation payments. The citizen contacted the Québec Ombudsman, requesting intervention.

The Québec Ombudsman believed that the CSST was circumventing the Law.

The Québec Ombudsman considered that the CSST's actions circumvented the Law. Article 429.49 of the Act respecting industrial accidents and occupational diseases clearly states that:

> "...The decision of the board is final, may not be appealed from and must be complied with without delay by every person to whom it applies".

The CSST paid the $11,000 rightfully due.

The Québec Ombudsman conferred with the CSST, after which the CSST granted the citizen rightful compensation of approximately $11,000. It also withdrew its now unwarranted motion to suspend compensation.

This government agency's behavior is all too common.

The Québec Ombudsman had already pointed out the refusal of this government agency to respect rulings of the CLP in its last annual report; nevertheless, such situations arose yet again over the course of last year. One case file examined by the Québec Ombudsman revealed that the CSST had not even respected the ruling of its own appeal process. In some cases, such oversights were the result of forgetfulness; in others, they were the deliberate result of decisions made by regional authorities

dissatisfied with the rulings made. Their reluctance to implement decisions deemed faulty stems from the fact that the Commission cannot subsequently recuperate payments if a compensation judgment is later overturned.

The Québec Ombudsman notified the President of the CSST of this situation. Since he concurred, the Québec Ombudsman expects that such situations will not reoccur.

The President of the CSST agreed with the Québec Ombudsman.

Categorization varied depending on the region

Pregnant woman earning fixed salaries can benefit from compensation through the Commission de la santé et de la sécurité du travail and its "For a Safe Maternity" program. If a woman's work duties pose health risks to either herself or her unborn child, she can take leave and receive 90% of her net income.

Pregnant working women have the right to benefits if their work duties pose health risks to themselves or their unborn baby.

A woman working "on call" who requests preventative maternity leave upon being called in to work is granted benefits from the CSST for the duration of the period that she cannot work. However, this is not the case for on "contract" workers. Since each work period, be it a day, is counted individually for women working under "contract", requests for preventative maternity leave must be submitted for each and every mandate. However, in practice, employers obviously do not call upon contract workers who applied for leave only days or weeks before. As a result, these women benefit from the program significantly less than women working "on call".

The Québec Ombudsman was alerted to this situation by a group of "contract" workers acting as substitutes in Quebec daycares.

The Québec Ombudsman received a complaint.

The investigation revealed that in certain regions, the Commission categorized these workers as "on call", whereas other regions in the Province categorized them as under "contract". Categorization depended on whether the women were deemed to work for a single employer, such as a group of daycares hiring substitute personnel for its units, or for several employers (successive individual daycares). The former group of women was therefore granted benefits for significantly longer periods of time.

The CSST's methods for categorization varied between regions.

The Québec Ombudsman felt that such disparity was unfair; the CSST corrected the problem.

The Québec Ombudsman felt that this distinction was unreasonable since both groups of women provided the same type of work for the same State-financed public service.

The Québec Ombudsman expressed its opinion to the CSST which consequently created a committee to study the problem. Once the committee submitted its recommendations, the CSST agreed to change its policy and consider all such workers to be "on call". As such, these women's benefits are no longer terminated each time a mandate comes to an end.

Self-evident but not evident enough

A citizen was injured at work.

A worker, whose main responsibility consisted in pushing a pedal forcefully using the sole of his foot, fell victim to a work-related injury to his foot. The attending physician declared in his medical report that the man was unable to walk barefoot and felt extreme pain each time he put pressure on his foot; an orthopaedic insert to decrease pressure on the foot was prescribed.

The attending physician neglected to indicate whether the man was physically able to carry out his duties

However, since the physician had neglected to indicate whether the man's injury impeded his ability to accomplish his work duties, the CSST deemed the worker capable of continuing his work and consequently terminated the worker's income replacement benefits without written notice. The worker filed a complaint with the Québec Ombudsman.

The CSST did not notify the citizen in writing.

The Québec Ombudsman first informed the CSST that, as stipulated in the Act respecting industrial accidents and occupational diseases, such decisions must be justified and communicated in writing. The worker could not challenge a ruling he never received.

The CSST's decision was illogical.

Secondly, the Québec Ombudsman believed that it was completely illogical on the part of the CSST to assume that the worker could continue his job simply because the physician had neglected to state otherwise. The medical report clearly included enough information for the CSST at least to suggest that the man's injury did indeed impede his ability to perform his job. The Québec Ombudsman suggested that the CSST contact the attending physician for further information.

As expected, the physician confirmed that the worker had functional limitations impeding his ability to continue his work.

Consequently, the worker's functional limitations were recognized and the CSST resumed the man's rightful income replacement benefit payments.

The physician confirmed that the man had functional limitations that impeded his ability to work. Compensation was restored.

Both sides of a story must be heard

A worker filed a complaint with the Québec Ombudsman after the CSST refused to accept that he had been the victim of a work-related injury. According to the worker, his injury occurred when the strap he was using to secure a tarpaulin over a semi-trailer snapped, hurtling him to the ground where he lost consciousness for several seconds after a brutal hit to the head. Four people saw the worker pick himself up off the ground. The worker continued working without filing an accident report or submitting a claim. Five days later, he finally informed his employer of the accident and nine days later he consulted a physician who diagnosed a lower back sprain. The worker requested compensation from the CSST, yet the latter refused his claim, arguing that the worker's injury was not work-related.

The CSST refused to accept that a citizen was the victim of a work-related injury.

In examining the worker's case, the Québec Ombudsman immediately found that the CSST had not applied the presumption provided by Article 28 of the Act respecting industrial accidents and occupational diseases which stipulates that: "an injury that happens at the workplace while the worker is at work is presumed to be an employment injury." When the agency was questioned about its decision, it claimed that the worker's delay in notifying his employer and consulting a physician was grounds for compensation refusal. According to the CSST, a worker suffering from a back sprain would not have been capable of continuing work for several days without medical treatment.

The CSST ignored a presumption of Law.

Furthermore, the worker's employer had told the CSST that no one had witnessed the accident and that the worker, only recently hired, had been recorded on tape admitting to a colleague that he suffered from back pain prior to starting work with this company. All of these reasons together motivated the CSST to refuse the worker compensation. It was clear that the CSST had put much more faith in the employer's version than in that of the worker.

The employer's allegations were taken as fact.

The employer's claims were unfounded.

The Québec Ombudsman decided to investigate the situation further. It obtained the aforementioned tape and found that the conversation which had supposedly taken place between the worker and a colleague had in fact taken place between the worker and his employer and contained no allusion whatsoever to the worker's previous back pain, as his employer had claimed. Obviously, the CSST had not listened to the tape nor verified the employer's claim of the absence of witnesses to the accident. Moreover, the investigation revealed that the worker had in fact notified his employer of the accident only two days after he returned to work (five days after the incident which occurred on a Friday), and not ten days later as the employer had claimed.

The Québec Ombudsman suggested that the CSST closely investigate the case.

The Québec Ombudsman suggested that the CSST listen to the tape and interrogate the witnesses as identified by the worker. Lastly, the Québec Ombudsman requested the CSST to reconsider the worker's case file by giving the attending physician's diagnosis the appropriate credence.

The citizen's rights were reestablished.

After the CSST had reviewed the evidence, it agreed that the accident was indeed the cause of the worker's sprained back and it granted the worker the relevant compensation.

A case of care and attention

A citizen is ordered to cease all verbal contact with the CSST.

A worker received notice from the CSST to cease contact with the agency's employees after they claimed that the worker was verbally harassing them. The worker, also informed that he was no longer permitted in the CSST office and that future contact would only be accepted in writing, called the Québec Ombudsman for help.

The citizen's complaints were credible.

The Québec Ombudsman learned that the worker had been at odds with the CSST for several years over a variety of issues such as personal care, physiotherapy treatments, medical expenses, the base salary on which the amount of benefits to which he is entitled were based, etc.

Although the man appeared to be psychologically fragile, his account of the facts was coherent and credible. The Québec Ombudsman therefore decided to proceed with an examination of his case file. Since the situation was fairly complex, a meeting

with all the members of the CSST involved with the case was called.

The CSST's restrictions were too severe.

The Québec Ombudsman told the group that, in principle, it is unreasonable to ban a worker receiving benefits from all verbal communication with the CSST. It also informed them that using a formal notice seemed unduly drastic since the worker was clearly harmless. In the Québec Ombudsman's opinion, the man was perfectly justified in seeking answers to his questions and that as long as they went unanswered, he would continue to ask his questions incessantly.

A meeting was convened. The situation was resolved to the citizen's satisfaction.

A meeting between the relevant CSST personnel, the worker and his representatives and a member of the Québec Ombudsman's office was called and yielded positive results. It was agreed that corrections to the worker's case file were to be made. Additionally, other issues were clarified with clear and complete explanations which the worker fully understood. In early 2003, the CSST sent a letter to the worker summarizing all the issues that had been discussed and the measures which were implemented, to the worker's satisfaction.

The Québec Ombudsman stressed the fact that appropriate methods of communication and follow-up need to be implemented that take into consideration the fragile psychological state of certain citizens.

Overpayments should not have been reimbursed

The CSST claimed $2,360 in overpayments.

A worker, having fallen victim to a work-related injury, filled out the CSST's form for determining compensation amounts and included the fact that she had two children under her care. Compensation was granted and paid, but shortly thereafter, the CSST notified the worker that they had paid her $2,360 too much.

Despite a prior agreement, the CSST went ahead with garnishment procedures.

The woman did not question the CSST's claim in this matter. In good faith, she complied with the request and agreed to reimburse the amount through monthly installments of $50. Despite this arrangement, the CSST subsequently submitted a default certificate to the Court of Quebec giving the government agency to right to garnish her income. The woman appealed to the Québec Ombudsman for intervention.

The woman's debt was largely due to an error made by the CSST.

The first objective of the Québec Ombudsman's investigation was to understand why the CSST had been motivated to take this action despite the arrangement agreed upon between the woman and the agency. However, while investigating this issue, the Québec Ombudsman discovered why the CSST had paid too much in the first place: the CSST had mistakenly entered that the woman had three children under her care instead of two, as she had clearly stated on the form, resulting in an overpayment of $1,600. Therefore, a large portion of the woman's debt was incurred as a direct result of an error on the part of the CSST.

The remainder of her debt, approximately $760, was the result of excess income replacement benefits paid when the woman resumed work earlier than expected. When the Québec Ombudsman intervened, the woman had already reimbursed $460 and the CSST was demanding another $1,900.

The citizen's debt was reduced to $300.

The Québec Ombudsman recommended that the CSST cancel the debt incurred through the agency's administrative error - the CSST agreed. As for the remaining $300 due, the agency promised to abide by the original arrangements for reimbursement.

Compensation for victims of criminal acts

Positive response to the Québec Ombudsman's recommendations

In its last annual report, the Québec Ombudsman announced the submission of its special report on the Crime Victims Compensation Plan: "Le contrecoup du crime à assumer par l'État". Basing its argument on the fact that crime victims did not receive fair compensation when compared to the benefits granted to victims of work-related or road accidents, the Québec Ombudsman suggested that it was time to review the benefits plan for victims of criminal acts. As a result, it offered eight recommendations that are included in its 2001-2002 annual report.

The Minister of Justice, who is responsible for ensuring that the activities of the Direction de l'indemnisation des victimes d'actes criminels (IVAC) within the CSST comply with the Crime Victims Compensation Act, welcomed the Québec

Ombudsman's recommendations. He expressed similar concern for the inequities that stem from disparities between benefit plans. The Minister received the Québec Ombudsman's report at the perfect moment since he had recently assembled an advisory committee to analyse the benefit plan for crime victims.

The advisory committee included the Québec Ombudsman's recommendations in the report it submitted in June of 2002.

Information of a better quality

Although no parliamentary bill has been tabled in this regard as of yet, the Québec Ombudsman has noted the progress made by the CSST with respect to transparency. Certain improvements have been made to the quality of the information provided to crime victims.

For instance, when victims received notification that the IVAC had accepted their compensation request, they often misunderstood that benefits payments would follow. The wording of the notice was easy to misinterpret and many beneficiaries did not understand that they had to go through a needs assessment before they could receive benefits. The Québec Ombudsman brought the problem to the attention of the IVAC, which agreed to eliminate the ambiguities in the notice.

From now on, the victim will be informed that his or her request has been accepted and that "the file will be transferred to the agent handling the needs assessment to determine whether the victim is entitled to benefits".

Some decisions concerning permanent disability: the request was looked upon favourably.

Evaluating permanent disability normally is based on the victim's physical injury and incapacity to work. However, the IVAC does not distinguish between these two elements; instead, it calculates the victim's percentage of total permanent disability (eg. 15%) without explaining how this percentage breaks down. Therefore, the victim's physical injuries could be calculated as 10% and his incapacity to work would be calculated as 5%, but this information would only be transmitted to the victim verbally.

The Québec Ombudsman asked the IVAC to issue rulings that clearly define the two elements so that victims can easily and fully understand all the facts behind the IVAC's assessment. Victims can therefore better evaluate whether they have reason to contest the decision in court and prepare, if the occasion arises, evidence to support their arguments. The IVAC concurred with this recommendation.

A citizen's memory lapses should have been taken into account

The CSST refused compensation because the request was not submitted on time.

A crime victim requested compensation in September 2001 but she was informed in July of 2002 that her request was refused because she had submitted it too late and had provided no reason for the delay. The citizen requested help from the Québec Ombudsman.

The woman was very likely suffering from serious memory lapses.

It noticed that the citizen had in fact explained that the delay was due to her memory lapses and other psychological problems. The CSST had not taken this justification into account. Moreover, during successive conversations with the woman, the Québec Ombudsman noticed that the woman repeatedly forgot that she had already spoken with the institution's representant.

The Québec Ombudsman succeeded in having the case reviewed.

The Québec Ombudsman concluded that the IVAC had not given enough importance to the woman's memory lapses. The organization then admitted that it had perhaps underestimated the woman's difficulties and it agreed to review her case file.

The Québec Ombudsman then contacted the citizen's attending physician, who agreed to send the IVAC additional information regarding the severity of the woman's memory lapses.

The CSST accepted the woman's claim.

Subsequently, the Québec Ombudsman was notified that the IVAC had reversed its initial decision and accepted the woman's request for compensation.

3.2.2
The Public Curator

The Public Curator and its mission

In 1990, a major legislative reform modified the Public Curator's mission. Henceforth, the Public Curator must attach as much, if not more, importance to protecting the people themselves who are legally considered incapable rather than just to protecting their property. Furthermore, such people and their well-being must remain the focus of all decisions affecting them. The Public Curator now has the duty to keep incapable people informed, consult with them (inasmuch as this is possible and reasonable) and take their opinions into account.

When citizens are no longer able to protect themselves and their property, and they have not chosen a third party to do so, protective supervision must be initiated after their incapacities have been evaluated by experts and recognized by a court of law; a close relation is then designated by a Superior Court clerk or judge.

At times, the Court cannot find a suitable relative or friend or deems that it would not be in the best interest of the incapable person for existing relatives or friends to represent the person, in which case the Public Curator is designated to fulfill this role, which is therefore suppletive.

The Public Curator is the specialist when it comes to protecting people deemed incapable. It is a necessary and crucial role since it befalls the Public Curator to make life-altering decisions for the person in question. As a representative for such people, the Public Curator must ensure a person's protection, guarantee that his or her rights are upheld, as well as manage his or her estate. In addition, the Public Curator must guarantee the person's moral and material well-being.

The Québec Ombudsman knows that it is not always easy for the Public Curator to adapt administrative procedures when quick action, flexibility and especially personal attention are required while fulfilling its important role. The simplest

things in life can become complicated, as the following examples demonstrate.

Before God and man

A citizen represented by the Public Curator wished to get married.

A woman represented by the Public Curator wished to get married. The citizen's close relations tried to convince the woman to live in a common-law relationship with her partner but this went against the couple's values. Only a formal ceremony before a priest would make them happy. Therefore, the couple requested the Public Curator's authorization, whose delayed response incited the couple to file a complaint with the Québec Ombudsman.

The Public Curator hesitated to authorize the marriage.

Upon questioning, the employee in charge of the woman's case file explained that the delay was due to the highly uncommon nature of the request. In truth, very few people represented by the Public Curator express the desire to get married, which is why the employee wanted to verify his responsibilities in such circumstances and wanted to obtain the legal department's opinion.

The Public Curator recognized the woman's right to get married.

The Québec Ombudsman felt that the Public Curator did not need to meddle in this decision since, in principle, it was simply an exercise of the woman's right. However, the Québec Ombudsman did suggest that they verify whether the represented person fully understood the act of marriage and ensure, within reason, that this union would not pose a risk of injury or prejudice to the woman. The Public Curator followed the Québec Ombudsman's suggestions and the couple was married in August 2002. The Québec Ombudsman wished the newlyweds much happiness and its best wishes.

The Public Curator is responsible for maintaining a direct relationship with the person it represents

A citizen did not receive the payments he was promised.

A citizen's budget had been laid out in detail by an advisor in the Public Curator's office, however, since then, the man's situation changed. A part of the man's property was destroyed when he moved into a new residence and he was required to buy new furniture, however, the monies he received could not cover the purchase. Therefore, he contacted his advisor and together they

prepared a new budget. Some time later, the man noticed that the amounts he received from the educator at the local community service centre (CLSC) who helped him manage his daily needs and who the Public Curator entrusted with the management of the citizen's finances, did not equal the amount stated in his budget. The citizen appealed to the Québec Ombudsman for help.

The man's budget had been modified without his knowledge.

Questioned by the Québec Ombudsman, the citizen's advisor explained that after her last conversation with the man, she reviewed his finances and modified his budget. She notified the educator at the CLSC of the changes but neglected to directly inform the citizen himself.

It is the Public Curator's duty, as primary representative of incapable persons, to maintain direct contact with them.

The Québec Ombudsman believed that this was inappropriate since it is the Public Curator's duty to personally discuss such issues with the people it represents. It should not be left up to a third party to inform people deemed incapable of the Public Curator's decisions and explanations thereof, regardless of how good the relationship between the government agency and the Health and Social Services network might be. The advisor agreed with the Québec Ombudsman's point of view and promised to personally contact the citizen again and review his budget.

The Québec Ombudsman reminds the Public Curator of the following duties: it must not delegate all of its responsibilities to third parties; it is responsible for maintaining a relationship with the persons it represents; and it must ensure that the daily management of the finances and property of said persons remains in conformity with prior agreements.

A visit was necessary

The Public Curator neglected to verify assertions made regarding the well-being of a man under its protection.

The mother of a man represented by the Public Curator was concerned that the quality of her son's life was below acceptable standards. Her son resided with a foster family and, in her opinion, his bedroom was filthy, his mattress needed replacing and his shoes were worn-out and had to be changed. However, the head of the household where the citizen lived refused to make these changes and, furthermore, she refused to grant the citizen permission to visit his family during the holidays. The citizen's mother appealed to the Québec Ombudsman because she believed that the Public Curator was neglecting to inspect her son's living conditions and demand that the foster family make improvements.

Upon the Québec Ombudsman's request, the Public Curator verified the man's situation and the necessary changes were made.

The investigation revealed that the Public Curator's advisor in charge of the citizen's case file had not marked the citizen's case as urgent due to her heavy case load. However, at the Québec Ombudsman's request, she promptly visited the residence in question and confirmed the mother's allegations. The advisor noticed several other anomalies and demanded that the necessary corrections be implemented immediately, which was done. Furthermore, the Public Curator promised to perform periodic, spontaneous visits to ensure that the citizen's well-being was not jeopardized. The Québec Ombudsman would like to remind the Public Curator of its responsibility to ensure the well-being of the person it represents.

Payments not allowed!

The Public Curator would not allow a citizen to pay his wife's life insurance premiums.

A woman, separated from her partner, resided in a home-care centre. The citizen was deemed legally incapable and was therefore represented by the Public Curator. While still living together, the couple had bought life insurance in their son's name and mutually agreed that the father would cover the premium costs for both insurance policies. However, the Public Curator told the man that he did not have the right to pay for his wife's insurance premiums. The man tried, in vain, to explain that his wife had very little income and that he was only respecting their prior agreement. The man notified the Québec Ombudsman of the situation.

The Québec Ombudsman felt that the Public Curator's decision was unfounded.

The Public Curator felt that the insurance premium should be paid from the woman's own funds, in order, it argued, to respect her wishes. Taken aback by this way of seeing things, the Québec Ombudsman asserted that the woman's wish was to possess life insurance with her son as beneficiary. Her wish would be just as, if not more, respected if the Public Curator simply verified each year that the father truly did pay the insurance premiums, as promised.

The Public Curator concurred with the Québec Ombudsman.

The Public Curator concurred with the Québec Ombudsman's proposal. However, since the premium had already been paid for the upcoming year, it was agreed that the Public Curator would allow the father to pay the premium beginning the following year.

The problem reoccurred.

One year later, the father contacted the Québec Ombudsman again because the insurance company informed him that the

Public Curator had, despite the agreement made, once again paid the premium.

Discussions with the Public Curator revealed that the prior agreement could not be upheld since the computer system automatically makes payments when insurance premiums are due. The Public Curator reimbursed the amount it had deducted from the woman's funds. The Québec Ombudsman hopes that this situation will not be repeated next year.

The computer system was the boss.

Bank fees upset a modest budget

A counselor established a budget for a man unable to care for himself, ensuring that the bank would give him $20 every week. The citizen was satisfied with this arrangement. However, during one of his weekly visits to the bank, the teller gave the man only $14, explaining that $6 in bank fees had been withdrawn to cover monthly administrative costs. Since the Public Curator had calculated the man's budget down to the last dollar, this unexpected reduction in his allowance meant to cover his modest needs was injurious. The citizen therefore appealed to the Québec Ombudsman.

Bank fees reduced the allowance allocated to a man under the Public Curator's care.

The Québec Ombudsman discussed the issue with the man's Public Curator counselor and notified the counselor that she should have calculated the bank's monthly fees into the citizen's budget and verified that the Public Curator deposit sufficient monies to cover the cost of these fees, in addition to the man's weekly allowance. However, the counselor told the Québec Ombudsman that it was not her responsibility to calculate those kinds of fees, but rather the responsibility of the person in charge of estate management, in a separate branch of the Public Curator's office.

The man's counselor believed that she could not correct the problem herself.

The Québec Ombudsman contacted the director of estate management to discuss the problem. In light of what the counselor had told the Québec Ombudsman, it suspected that the man's situation was not unique and that other people certainly faced the same type of problem. This was indeed the case. The director took the problem in hand and ensured the Québec Ombudsman that all employees working in the Public Curator's office would be informed of this problem and that the situation would not reoccur.

The relevant administrative branch agreed to rectify the problem.

Incapable person unknown to the Public Curator

A citizen's property was destroyed. It is the Public Curator's duty to request compensation.

A fire broke out in the rooming house where a man represented by the Public Curator resided, destroying all his property. A beneficiary of social assistance, the citizen appealed to the Ministère de l'Emploi et de la Solidarité requesting compensation for the losses he sustained. The Ministry sent the man to the Public Curator, claiming that the latter is responsible for handling compensation requests submitted by legally incapable persons. However, the Public Curator was slow to respond and the citizen approached the Québec Ombudsman for help.

The Public Curator ignored the man's situation.

First of all, the Québec Ombudsman noted that the Ministère de l'Emploi et de la Solidarité had rightly sent the man to the Public Curator since it is indeed the Public Curator's role to act in the name of the people it represents. The Québec Ombudsman's investigation also revealed that the employee in charge of the citizen's case file had quit his job some time before and his successor had neither been informed of the situation nor introduced to the citizen.

The Public Curator submitted a request for compensation.

After the Québec Ombudsman asked the Public Curator to intervene, the latter, on behalf of the citizen, requested reimbursement for property destroyed in the fire; the citizen received compensation and was able to replace his property.

3.2.3

The Régie de l'assurance maladie du Québec

Citizens were acting in good faith

A mixed prescription drug insurance plan: registration varies depending on one's employment situation.

The basic plan, as decreed by the Act respecting prescription drug insurance, grants mandatory coverage for all residents of Québec. While the plan provides basic coverage for everyone, the registration process varies depending on citizens' employment situation. Those eligible for group health insurance through their current or past employer, or a professional association, are required to avail themselves of such coverage and also register their spouse and their children. Other Quebec residents must register with the public plan through the Régie de l'assurance maladie du Québec (RAMQ). The former citizens pay their insurance premiums to the various insurance companies managing group health plans, whereas the latter pay their premiums to the State with their income taxes, as well as paying a portion of every medication purchase.

Some citizens should not have registered for coverage through the RAMQ and were requested to reimburse the RAMQ.

These provisions have been in effect since the public plan was initiated in January of 1997. However, early in 2002, the RAMQ and the Ministère du Revenu began reviewing citizens' files and discovered that many people registered with the RAMQ should have been, in accordance with the law, covered by a group insurance plan. The review board also noticed that some citizens forgot to include their children and spouse on their plan.

Following these reviews, the RAMQ cancelled these citizens' registration with the public plan. In several cases, the RAMQ even claimed reimbursement for the cost of medications and pharmaceutical services already covered. Several citizens contacted the Québec Ombudsman and requested its help.

The vast majority of these people were unaware of the Act's provisions.

The investigation revealed that although these people had indeed been illegally registered with the RAMQ's insurance plan, the Québec Ombudsman ascertained that the vast majority of them had actually acted in good faith; most of these citizens did not understand the provisions of the Act, whose complexities had already been noted several years previous by the Québec Ombudsman. Other citizens simply forgot to switch insurance

plans when their employment situation changed (eg. when they began working for an employer offering group insurance coverage).

Information about the insurance plan was insufficient.

The Québec Ombudsman found that citizens did not easily understand the Act respecting prescription drug insurance. As the RAMQ readily admitted, it had not organized a major information campaign since 1997. The Québec Ombudsman therefore concluded that, with the exception of a few brochures, citizens could access information about the Act by directly contacting the RAMQ – an inadequate method of informing the public. When a universal program is implemented, especially one with complex and variable features, comprehensive information campaigns are needed.

The Québec Ombudsman asked the RAMQ to reconsider the citizens' case files with a good measure of understanding and flexibility.

The Québec Ombudsman gave this conclusion to the RAMQ and requested that, considering the circumstances, they review these case files with the utmost understanding and flexibility.

An overly harsh penalty

The RAMQ refused to reissue new health insurance cards for a mother and her young daughter because the mother owed the Board money.

The RAMQ refused to reissue new health insurance cards to a woman and her four-year-old daughter, arguing that the woman owed them money, in accordance with Article 9.0.2 of the Health Insurance Act which allows the RAMQ to refuse issuance of a health insurance card to a debtor of the Board. The woman filed a complaint with the Québec Ombudsman on behalf of herself and her daughter.

The investigation revealed that the citizen and her daughter had unlawfully benefited from the public plan because the citizen's husband, who was registered with his employer's group insurance plan, forgot to register his daughter and wife. The woman and her daughter had illegally obtained approximately $2,000 worth of medications through the public plan.

Once the citizen was informed of the situation, she acknowledged her debt and agreed to pay it off. However, when her application for a new health insurance card was refused, $660 in debt remained to be paid.

The Québec Ombudsman felt that while the RAMQ's actions complied with the law, they were nonetheless extremely harsh,

particularly with respect to the young girl who had nothing to do with the mix-up and frequently required medical care. One must remember that a person lacking a health insurance card cannot benefit from any insured service whatsoever (medical treatments, child dentistry services, medications, etc.).

The Québec Ombudsman felt that the penalty was too severe, especially for the young girl.

Heeding the Québec Ombudsman's suggestion, the RAMQ agreed, on humanitarian grounds, to register the young girl to the public plan immediately. It also agreed to register the girl's mother as soon as her debt was entirely paid off.

The RAMQ agreed with the Québec Ombudsman.

The Québec Ombudsman was greatly pleased several months later to hear that the Minister of Health and Social Services had requested the RAMQ to exempt minors when they refuse health insurance registration applications or renewal requests.

The Minister decided to modify RAMQ's current policies.

Urgency of situation justified exemption

A woman residing in the Outaouais region was to undergo a cancer operation in a hospital in Ottawa. However, ten days before the operation, she suffered the onslought of another illness which the doctors said had to be treated before her operation could be performed. She was prescribed a medication available only in certain pharmacies; moreover, there could be a waiting period between 24 to 48 hours for it to arrive in the store.

A woman urgently required a specific medication.

Despite repeated efforts, the woman's husband could not obtain the medication in Quebec. Time was of the essence. Finally, he found a pharmacy in Ottawa that carried the required medication, allowing his wife to be treated and to have her operation performed on the appointed day. However, the RAMQ refused to reimburse the woman's medication through her prescription drug health insurance plan. The woman's husband therefore filed a complaint with the Québec Ombudsman.

The woman's husband could not obtain the medication quickly enough in Quebec so he bought it in Ontario. The RAMQ refused to reimburse the cost of the medication.

At first glance, the Board's refusal seemed justified since the Act respecting prescription drug insurance is perfectly clear on this point: only medication bought in Quebec can be reimbursed. Nevertheless, the Québec Ombudsman believed that the woman's particular circumstances should be taken into account since the medication had to be obtained quickly and the woman's husband had gone to sufficient lengths, in vain, to get it in Quebec.

The circumstances justified purchasing the medication outside Quebec.

The RAMQ reimbursed the citizen.

The Board's complaints bureau concurred with the Québec Ombudsman. After receiving a letter from a Quebec pharmacist confirming that it was impossible to supply the necessary medication in time, the Board agreed to reimburse the woman $265.

It's the ultimate goal of the law that counts

The RAMQ refused a citizen admission to the public plan.

A citizen was required to take a medication costing him $1,600 a month. Although he resided in Quebec, he worked in Ontario and benefited from collective health insurance through his employer in Ontario. However, this insurance only covered medication costs up to $1,000 per month; therefore he applied for coverage with the RAMQ's prescription drug insurance plan but was refused. The man appealed to the Québec Ombudsman.

The citizen was not allowed to be covered by both the provincial plan and his employer's group insurance plan.

When asked to justify their refusal, the RAMQ argued that the citizen could not be covered by both group insurance and the public plan. Article 16 of the Act respecting prescription drug insurance decreed that he must register for collective coverage with his employer and, by that fact, was excluded from the public plan since the two plans were mutually exclusive.

An Act must be interpreted with all its articles in mind.

Upon reflection, the Québec Ombudsman came to the conclusion that the RAMQ's position, in this particular case, was faulty. Indeed, Article 35 of the Act specifies that a group insurance plan "is deemed to provide basic plan coverage".

For all practical purposes, this means that an employer must offer an insurance plan with coverage at least equal to the basic plan's coverage. Quebec's insurance plan stipulates that citizens pay no more than $822 annually for medication; obviously, in this case, the Ontario-based employer's health plan did not offer such coverage.

The citizen's right to health coverage was resumed.

On one hand, as a resident of Quebec, the man had the right to benefit from Provincial health coverage. On the other hand, it was impossible to compel the employer in Ontario to "adjust" his group insurance plan to fit the provisions of Quebec laws. The Québec Ombudsman therefore recommended that the citizen's application to the public plan be granted. The Board accepted.

A citizen deemed "wealthy" in fact was not

A citizen was asked to pay the maximum amount for lodging expenses even though her sole income came from social assistance.

A citizen living in a public home-care center was informed by the RAMQ of the amount she needed to contribute for lodging expenses. In accordance with the Board's policy, the woman was requested to pay $1,120 a month, which is the maximum amount allowed.

The woman's daughter filed a complaint with the Québec Ombudsman. She could not understand why her mother was required to pay the maximum amount despite the fact that her only revenue came from social assistance payments from the Ministère de l'Emploi et de la Solidarité.

It appeared as though the woman had savings.

Initially, the investigation revealed that the RAMQ's position was justified since current regulation stipulates that contribution amounts are to be calculated not only based on the revenue of the person residing in the home-care centre, but also on the value of his or her property, or if applicable, on that of his or her spouse. In this case, the woman had $4,000 in the bank when she moved into the centre; the maximum amount permitted in liquid assets is $2,500. Therefore, the woman's surplus savings must be applied to her lodging contributions until they drop below $2,500, at which point her contributions could finally be decreased.

Yet appearances proved faulty.

However, discussions with the daughter revealed that the woman's $4,000 was not truly hers. The woman, having been hospitalized for a time before moving into the home-care centre, had not been capable of managing her finances at that time. While waiting for a notarized power of attorney, the daughter had paid her mother's rent and financed her daily needs; in truth, her mother owed her $5,000.

The RAMQ acknowledged the fact.

The Québec Ombudsman notified the RAMQ that the citizen did not actually possess $4,000 at the time she was admitted to the home-care centre. The Board reviewed this allegation and concurred with the Québec Ombudsman. New calculations were made and the woman was requested to contribute $657 per month.

3.2.4

The Régie des alcools, des courses et des jeux

A useless requirement

A non-profit organization had its request for a liquor permit refused because it was not registered with the IGIF.

A non-profit organization that frequently held evening dances wanted to finance a dance troupe's competition tour through the United States. To do so, the organization planned to raise money from the sale of alcoholic drinks served during the evening dances. The organization followed the necessary protocol with the Régie des alcools, des courses et des jeux (RACJ) to obtain the required liquor permit. However the RACJ refused to grant it to them, arguing that the organization was not registered with the Inspecteur général des institutions financières (IGIF). The organization did not understand why this procedure was necessary and appealed to the Québec Ombudsman.

The RACJ implemented this requirement because it believed this procedure would verify the authenticity of such organizations and monitor the spending of funds raised.

The investigation revealed that since 2002, the RACJ has enforced a policy whereby all organizations desiring a liquor permit must be registered with the IGIF. According to the RACJ, this policy was put in place for two reasons: firstly, to ensure the legitimacy of the organization and secondly, to verify that the organization uses liquor sale revenues as so declared on the permit request form.

Yet non-profit organizations were actually not required to register with the IGIF and management of their funds was not monitored by the IGIF.

The Québec Ombudsman investigated and found that non-profit organizations were in fact not required to register with the IGIF. Moreover, it was revealed that, contrary to the RACJ's claim, the IGIF actually has no supervisory authority over the management of such organizations. Therefore, it was completely useless to force organizations to register with the IGIF.

Following the Québec Ombudsman's request, the RACJ cancelled the requirement to register with the IGIF.

Following discussions with the Québec Ombudsman, the RACJ modified its policy in this respect, no longer forcing non-profit organizations to register with the IGIF. From now on, the RACJ will simply ask groups not registered with the IGIF to submit the necessary information directly to them.

3.2.5

The Régie des rentes du Québec

Interpretation of the law lacked flexibility

A citizen was granted a disability pension in December of 2000. In such cases, all his children are also entitled to a pension. When the citizen filled in the form, he included his children born from his current partner and living with him at the time, but forgot to add his three children living with his ex-wife.

A citizen forgot to include all his children on his pension request form.

Early in 2002, the man's ex-wife, having discovered that the Régie des rentes du Québec (RRQ) recognized her ex-husband as disabled, contacted the RRQ for more information. However, for confidentiality reasons, they refused to give her any information regarding her ex-husband's status.

The man's ex-wife later submitted a request on behalf of her children.

In any event, the woman requested benefits for her children shortly thereafter. The RRQ's response was positive: they accepted her request.

However, since the law stipulates that retroactive payments cannot extend beyond twelve months from the request date, the woman's children would only receive pension payments owed from April of 2001, meaning that they would miss out on four months of pension payments. The woman contacted the Québec Ombudsman for help.

The RRQ refused to grant retroactive payments beyond twelve months.

The Québec Ombudsman felt that in this particular case the RRQ's interpretation of the law was too restrictive. The RRQ should have taken into account the fact that the man had submitted his request for a disability pension in December of 2000 and, due to an error on his part, his children suffered the consequences although they were entirely innocent. Moreover, the man's ex-wife had acted with nothing but diligence without even being able to verify her ex-husband's status. Under the circumstances, it was unreasonable to deny the children of the first marriage four months of pension payments which the children from the second marriage received.

Neither the mother nor her children were at fault – the RRQ had not interpreted the law with enough flexibility.

The RRQ agreed with the Québec Ombudsman and the ex-wife's children were granted pension benefits from January 1, 2002.

The pensions were awarded.

Furthermore, the RRQ promised to interpret the law with more flexibility in future situations similar to this one. Whenever beneficiaries omit to enter all the necessary information, the agency will correct injuries done to third parties as soon as they are discovered.

One correction leads to another...

In 2000, a citizen's first request for a pension was denied; the RRQ would not recognized him as disabled.

A citizen stopped working in 1991 due to health reasons. In April of 2000, he requested a disability pension from the Régie des rentes du Québec (RRQ) yet his request was denied. The citizen did not dispute this decision.

In 2002, the citizen filed a second request; he was deemed disabled but had not contributed enough to the RRQ to receive a pension.

Despite the previous rejection, the man submitted another request in March of 2002 and, this time, it was accepted. However, since the citizen had not contributed long enough to the RRQ, he was still denied pension benefits. To be eligible, he would have had to make contributions for at least half the years between his eighteenth birthday and the date his disability was recognized. Since twenty-seven years had passed between these two dates, the minimum contribution period was therefore thirteen years and a half, but the man had contributed only for thirteen years. Faced with this second refusal, the citizen contacted the Québec Ombudsman.

The citizen should have been deemed disabled in 2000, at which time he had contributed a sufficient amount.

The Québec Ombudsman's first question was whether the man's first request for a disability pension in 2000 should actually have been accepted. It therefore asked the RRQ to review the entire case file, paying particular attention to this issue. The RRQ's medical team studied the man's file and concluded that his infirmity had originally been underestimated and that the citizen should have been recognized as disabled in April of 2000. If the RRQ had done so at that time, the citizen would have met the minimum contribution period requirements.

The situation was corrected.

Following these discoveries, the RRQ granted the man a disability pension. Including interest, he received more than $20,000.

3.2.6

The Société de l'assurance automobile du Québec

Assistance and compensation for road accident victims

For the fourth consecutive year, interest remains a primary issue

A citizen was deemed unable to work in November of 1998.

A man, victim of a car accident, was refused income replacement benefits because the Société de l'assurance automobile du Québec (SAAQ) ruled, in October of 1997, that there was no connection between the man's psychological condition and the accident. In May of 1999, the Tribunal administratif du Québec (TAQ) overruled this decision and deemed that there was a causal relationship between the citizen's mental health and the accident. The TAQ returned the file to the SAAQ which was to determine the extent of the man's condition.

The SAAQ refused to pay interest from November 1998 to September 1999.

On September 22, 1999, the SAAQ decided that the man's disability lasted only from February to November 1998 and therefore income replacement benefits, with interest, were granted only for this period. The citizen disputed this decision since he believed that he was still unable to resume employment. In December of 2001, the SAAQ agreed that the man was unable to return to work, and had been since November 1998, reinstating payments of the income replacement benefits for November 1998 to December 2001. However, the interest on these payments was only paid out from September 1999 to December 2001 and declined for the period between November 1998 and September 1999 since, according to the SAAQ, the Automobile Insurance Act stipulates that interest is calculated "from the date of the decision refusing to recognize entitlement to an indemnity or refusing to increase the amount of an indemnity, as the case may be". According to the SAAQ, this referred to the ruling made on September 22, 1999, justifying their decision that interest for the period between November 1998 and September 1999 was excluded and could only be calculated from September 22, 1999 onward. The citizen filed a complaint with the Québec Ombudsman, demanding interest payments for the ten missing months.

Lawfully and logically, the right to interest payments should begin when the right to benefits began.

Upon reflexion, the Québec Ombudsman concluded that the SAAQ was mistaken. In fact, the SAAQ was mixing up two dates: the date they decided the duration of the man's income replacement benefit (September 1999) and the date when they decided whether the man had the right to this benefit (October 1997).

Furthermore, it seemed logical to the Québec Ombudsman to grant interest from the date when the man's capital was due to be paid. Moreover, the SAAQ's policy manual specifies that: "With respect to income replacement benefits, the right to interest payment is to be granted as soon as benefit payments begin". Therefore, as the decision in 2001 ruled that the citizen was unable of working and had been since November 1998, interest should have begun at that time as well. The SAAQ's decision contradicted its very own policies and was far too strict with respect to remedial legislation which, to guarantee that its objectives are met, should be interpreted with flexibility.

The situation was corrected.

During the investigation, the Québec Ombudsman also discovered that the Commission des affaires sociales (TAQ's predecessor) had ruled along the same lines for a similar case in 1998. Moreover, the SAAQ had received legal advice only a few months prior stating that "to grant the right to indemnities implies 'de facto' the right to interest as well".

The Québec Ombudsman therefore requested the SAAQ to pay interest for the period between November 1998 and September 1999; the SAAQ agreed.

Without new evidence, the initial decision could not be modified

A citizen filed a claim on grounds of a medical relapse.

After a car accident in 1988, a man was diagnosed with a chronic cerebral syndrome that had to be constantly monitored. In pain, the citizen quit his permanent job in 1989 and became self-employed. Between 1989 and 1999, he worked sporadically and only on contract. Then, in 1999, the citizen was unable to work at all. In February 2001, he filed a claim on grounds of a relapse, backing his claim with a neuropsychological evaluation performed in September of 2000.

In October 2001, the SAAQ agreed that the citizen's concentration problems, as well as his anxiety and panic attacks impeding his

ability to work, were indeed permanent effects of the car accident. Consequently, he was granted a lump-sum payment for a recognized 20% disability. An agent informed the citizen that the SAAQ would calculate his income replacement benefit at a later date. Yet, as this calculation was long in coming, the citizen brought his case to the Québec Ombudsman's attention.

The SAAQ studied his case file and accepted his claim.

The Québec Ombudsman contacted the SAAQ, requesting a prompt examination of the citizen's case file. In May 2002, a decision was announced. Unexpectedly, following a new medical evaluation performed in the spring of 2002 by a neurologist and a psychiatrist, the SAAQ suddenly denied that a causal relationship between the citizen's health problems and the 1988 car accident existed at all. The SAAQ did not even offer a written explanation of its decision regarding the man's relapse. The man was granted no income replacement benefit whatsoever.

The SAAQ reversed its decision.

The Québec Ombudsman was certain that it was illegal for the SAAQ to reverse its initial decision made in the fall of 2001. The law is clear in this respect. Since the second medical evaluation was based on the same evidence as the first, and considering that no new evidence between the October and February rulings was brought to the experts' attention, the SAAQ had no right to reverse its decision – it was lawfully required to uphold the decision it had made the previous fall. Furthermore, jurisprudence stipulates that an opposing opinion does not constitute new evidence.

The SAAQ had no right to change its mind.

The Québec Ombudsman also informed the SAAQ that in accordance with its own medical standards, an anatomico-physiological deficit of over 15% with neuropsychiatric effects constitutes a total inability to work. By its own reasoning, the SAAQ should consider the citizen as unable to work at any job and therefore should grant him the maximum income replacement benefit allowable.

The citizen was completely unable to work.

The SAAQ concurred with the Québec Ombudsman. The man's right to an indemnity was granted and calculated based on his total inability to work since 1988.

He was granted the maximum indemnity amount.

Preliminary reports: a tool to be used with care

The TAQ ruled that a woman's treatments to alleviate her pain should be reimbursed.

In October of 1994, a woman was the victim of a traffic accident which left her with serious injuries, including dorsalgia (back pain), neck pain, a lower back sprain and leg fractures.

In October of 2001, the Tribunal administratif du Québec agreed that due to the injuries provoked by the accident, the woman should receive treatment "for a chronic pain syndrome". Following this ruling, the SAAQ reimbursed the women for her physiotherapy and acupuncture treatments.

The woman later submitted a medical report indicating that she could no longer work.

On July 30, 2002, the woman submitted a medical report stating that her neck and back pain had worsened, making it impossible for her to continue work. On August 30, a consulting physician with SAAQ was given the case file and asked to answer two questions: firstly, whether the woman's worsened condition and consequent inability to work was caused by the 1994 accident; secondly, how often the woman should be authorized to get the TAQ-approved treatments for her chronic pain syndrome.

The SAAQ requested the opinion of a medical specialist whose preliminary report stated that the woman no longer required treatment.

In order to adequately answer these two questions, the SAAQ's physician requested the expertise of an orthopedic surgeon and forwarded the pertinent documents to him (including the TAQ's October 2001 ruling). Following the woman's medical evaluation in February 2003, the orthopedic surgeon sent his preliminary report directly to the agent handling the case file, stating that the woman was in fact able to work as of the day the evaluation was performed. Very succinctly, the surgeon justified his opinion by stating that no pathological elements were observed; consequently he recommended that no further treatments were needed since the woman's condition was stable, with no chance of worsening nor improving.

The SAAQ interrupted reimbursement of her treatments.

Based solely on this preliminary report, the SAAQ decided to stop reimbursing the treatments which alleviated the woman's pain. The woman filed a complaint with the Québec Ombudsman.

The preliminary report must judge a victim's ability to work.

The investigation showed that the SAAQ has relied on a "preliminary report" since the summer of 2002. This report is a very cursory form on which the consulting physician checks the appropriate boxes to indicate whether the patient is capable of working or not. A very limited space is intended for the physician's comments. Submitted several days or even weeks before the

detailed report, the preliminary report is used to help the SAAQ make a quick decision on a victim's ability to return to work.

The Québec Ombudsman ascertained that the SAAQ had actually used this preliminary report for purposes other than determining the woman's ability to continue working. To do so was highly questionable considering the TAQ's ruling in October 2001 to grant the woman reimbursement for treatments to alleviate her chronic pain. It was risky for the SAAQ to interrupt payment for these treatments based only on curt indications found in a report designed for another purpose.

It was unreasonable to use the preliminary report as a basis for interrupting reimbursements of the woman's treatments.

Upon the Québec Ombudsman's request, the SAAQ agreed to continue reimbursing the treatments until the final report is submitted and a new ruling is made.

The SAAQ will resume its reimbursements until the final report is received and studied.

Benefits lost, then found

An employed citizen who, in accordance with the former Workmen's Compensation Act, also received "economic stabilization benefits" from the CSST, was the victim of a car accident. Economic stabilization benefits are granted to compensate for reductions in an employee's income when he or she has been the victim of a work accident and can no longer perform the same duties due to functional limitations resulting from his or her injury.

A citizen received economic stabilization benefits from the CSST.

After the man's car accident, he was forced to stop working altogether; consequently, the CSST terminated his stabilization benefits since they are awarded to employed citizens only.

He lost his stabilization benefits as the result of a car accident.

However, in calculating the income replacement benefits to which the man was entitled, the SAAQ refused to consider his stabilization benefits as part of his gross income. The SAAQ informed the man that the stabilization benefits could not be included "because they are not subject to the Automobile Insurance Act". The man appealed to the Québec Ombudsman.

The SAAQ refused to include the stabilization benefits as part of its income replacement benefit calculations.

The investigation revealed that the SAAQ's policy guidelines stipulated that indemnities and benefits issued by the CSST are not to be included in gross income calculations. However, following the Québec Ombudsman's intervention, the SAAQ discovered a 1991 ruling by the Commission des affaires

The SAAQ's policy in this respect was in contravention of a CAS ruling.

sociales (CAS) clearly stating that economic stabilization benefits must be included in accident victims' gross income calculations. There was no doubt that the scope of this ruling was general and that the SAAQ was required to apply it to every similar case file.

After further analysis, the SAAQ agreed that the Québec Ombudsman's position was founded. It was, however, never revealed why the SAAQ's policy ignored the CAS ruling, despite the fact that they had implemented these guidelines well after 1991.

The Québec Ombudsman asked the SAAQ to trace and correct all similar case files.

Considering the situation, the Québec Ombudsman asked the SAAQ to look beyond this one case file and take the necessary steps to trace all similar case files and correct them if needed.

The SAAQ agreed; several other files were reviewed. However, matching the SAAQ's files with the CSST's files remains a problem.

The SAAQ agreed to do so. With respect to the man's case file, the SAAQ adjusted his income replacement benefit amounts (with interest), granting him an additional $7,000. As for similar case files, they were tracked down and corrected as well. Nevertheless, there are still problems matching the SAAQ's files with the CSST's files that remain to be solved if all similar case files are to be found. The Québec Ombudsman will follow the situation closely. Lastly, the SAAQ's administrative policies were modified: it is now clearly indicated that accident victims' gross income must include the amount of economic stabilization benefits that he or she has lost due to a car accident.

Disregarded evaluation reports

A citizen lost his job several months after a car accident. He asked for compensation.

A citizen had a car accident in December of 2000 and received income replacement benefits from the SAAQ for the few days of work he missed. At the beginning of January 2001 he resumed work.

However, over the next few months, the man suffered from a variety of problems: memory loss, stress and anxiety, frequent errors in his work, etc. In October of 2001, he quit his job and started working in another, much less demanding and less paid position. Yet he was still not up to scratch; unable to perform his duties adequately, he was fired in January of 2002.

Following this incident, the citizen asked the SAAQ to review his case file based on his relapse. He submitted two neuropsychological medical reports written by two different physicians:

one dated November 14, 2001 and the other, February 19, 2002. On February 20, 2002, the SAAQ announced its refusal to grant the citizen benefits since they could find no way of "establishing a causal relationship between the victim's worsened anxiety problems and his accident". Moreover, the SAAQ believed that his worsened anxiety problems were due to personal difficulties in adapting to the job he had started in October of 2001. The citizen filed a complaint with the Québec Ombudsman in March of 2002.

Though he backed his request with two medical reports, he was refused.

How could the SAAQ deny the causal relationship between the man's problems and his accident? The investigation revealed that the two neuropsychological evaluations, which were performed at a specialized medical centre referred by the SAAQ's Direction de la réadaptation, required a total of thirteen appointments with the citizen. The report dated February 19 states "that the victim's difficulties at work appear to be related to his accident, seeing as before the accident, he had been fully capable of performing his duties...". The report dated November 14 reaches more or less the same conclusion. The former report recommended that "the SAAQ take steps to reopen the victim's case file". These two medical reports were sent to the SAAQ's Direction de la réadaptation, yet they, and the recommendations found therein, were completely ignored. In fact, the SAAQ's decision did not even refer to the documents. In light of these facts, the Québec Ombudsman could not understand how the SAAQ could deny the link between the citizen's problems and his prior car accident. As it turns out, the consulting physician for the Direction de l'indemnisation was not aware of the existence of the two reports since he did not know that the man's case was being reviewed by the Direction de la réadaptation.

The Québec Ombudsman found that the SAAQ had disregarded the medical reports.

Thanks to the Québec Ombudsman's intervention, the SAAQ agreed that the man's problems were indeed tied to his December 2000 car accident. He was granted compensation for his loss in revenue when he changed jobs and he was also awarded the maximum indemnity amount, as of his dismissal date.

Thanks to the Québec Ombudsman's, the citizen was granted the indemnity and awarded compensation.

Road safety

Requirements for retrieving an impounded vehicle too strict

A garage owner loaned a courtesy car to a client. The car was impounded.

In October of 2002, a garage owner loaned one of his courtesy cars to a client. Two days later, the client loaned the vehicle to a third party who was stopped by a police officer while driving the car. Since the man did not have a valid driver's license, the police officer seized the car on the spot and impounded it for 30 days, in accordance with the Highway Safety Code.

The garage owner, being the rightful owner of the car, submitted a motion for release to retrieve his vehicle, arguing that he had not consented to having a third party drive the vehicle. Several days later, the SAAQ turned down his request and the citizen had to wait until the end of the 30-day period to retrieve his vehicle. Hoping to avoid a similar situation in the future, the citizen appealed to the Québec Ombudsman.

The SAAQ's requirements were unreasonable. The Québec Ombudsman convinced the SAAQ to modify its policy.

The investigation showed that the SAAQ refused to release the vehicle because the garage owner had not submitted an affidavit signed by the client confirming that the vehicle had been loaned to a third party unbeknownst to the vehicle's owner.

The Québec Ombudsman felt that the SAAQ's requirement in this respect was unreasonable. It was indeed excessive to force the citizen to submit a document written by a person over which he had no control, and to withhold the owner's car if the document was not produced.

The Québec Ombudsman informed the SAAQ of its opinion, following which the SAAQ modified its vehicle release policy. From now on, under similar circumstances, other kinds of evidence will be acceptable.

A citizen's case file should have been reviewed

The SAAQ learned that a citizen was blind in one eye. His driver's license was suspended.

A citizen with a Class 3 driver's license allowing him to drive a wide variety of vehicles, including trucks weighing more than 4,500 kilograms, wanted to get a Class 1 license giving him the right to drive trailers as well. However, during the medical exam needed to get this license, the doctor discovered that the

citizen was blind in one eye and had been since birth. Following the exam, the SAAQ not only refused to give the citizen the desired Class 1 license, it also informed the man that as of January 2002, he would no longer be able to drive at all.

Before his permit expired, the citizen sent test results to the SAAQ proving that his good eye had a perfectly functional field of vision. Yet having adequate vision in one eye was not sufficient reason for the SAAQ to review the citizen's case file; he would have to prove that he could adequately compensate for the total blindness of his other eye. The man made several other efforts to convince the SAAQ and, finally he learned that a special committee would evaluate his situation in March. In the meantime, however, the citizen's license was suspended on the appointed date, meaning that he could no longer work. The delay lengthened and the man, still waiting for the committee's decision, appealed to the Québec Ombudsman.

This decision was to be reviewed by a SAAQ special committee.

The investigation showed that, for two reasons, the citizen's case file had never been submitted for review to the special committee. For one, it was believed that the man had not produced the necessary medical report and completed questionnaire which allegedly had been asked of him in March. For another, he had challenged his license suspension in the Tribunal administratif du Québec (TAQ), thereby requiring the SAAQ to terminate all administrative reviews since a court proceeding was trying the case.

The SAAQ did not submit the citizen's case file to the special committee.

The investigation also revealed that the citizen had in fact submitted the necessary documents but, due to the SAAQ's administrative delays, the committee had never received them. Since the decision was so long in coming, the man had taken his case to the TAQ in the hopes of recovering his license and resuming work as quickly as possible.

The Québec Ombudsman recommended that the SAAQ grant the man the right to have his case reviewed by the committee.

The Québec Ombudsman concluded that the SAAQ's administrative error motivated the citizen to take his case to court, a far more lengthy and costly procedure than the special committee's review would have been. Therefore, after the citizen withdrew his case from the TAQ, the Québec Ombudsman recommended for the SAAQ to submit the citizen's case file for review with the special committee.

The SAAQ agreed and the special committee performed its review without further delay. The man's permit suspension was

The SAAQ concurred with the Québec Ombudsman and the man was allowed to drive again.

overturned and he was able to resume work. Furthermore, having passed all the necessary exams, he obtained the Class 1 license he wanted in December of 2002.

Unknowingly, citizens were driving without valid permits

Drivers' permits are valid for four years, so long as the biennial fees are paid.

Since April 1995, drivers' permits are valid for four-year periods but the fees must be paid every two years. If a citizen forgets to pays his fees, he or she automatically loses the right to drive without any notice whatsoever. It must be noted that until November 1999, this biennial payment was not mentioned anywhere on the driving permit.

After three years without a permit, driving exams must be taken anew.

The law also stipulates that people whose license to drive has been revoked for three years must take the same SAAQ practical and theoretical driving exams as they did to get their initial permit.

Renewal notices are not sent to everyone.

Generally, the SAAQ notifies drivers of their permit's expiry date, though this procedure is not required by law and is not in effect for those who did not pay their fees two years previous.

For a variety of reasons, some people drove for more than three years without a valid permit.

It so happens that drivers simply forget to pay their biennial fee because this requirement is not stipulated on their license; they then forget to renew their permit since they did not receive an expiry notice. This being the case, some of these people drive without a permit for three years or longer, requiring them to retake their driving exams when they realize their mistake.

The SAAQ relaxed its rules for drivers who mistakenly drove without a valid permit. Despite this, the Québec Ombudsman was required to intervene again.

Several years ago, the SAAQ agreed to relax its rules in these particular cases, no longer automatically forcing people who did not receive an expiry notice to retake their driving exams. Yet some citizens were not informed of this exception. The Québec Ombudsman was obliged to intervene again in 2002-2003 on behalf of citizens in this situation. It would like to remind the SAAQ that in such cases, as in many others, clear and precise information, distributed to everyone concerned at the appropriate moment, generally succeeds in mitigating such problems.

3.3

Examination of parliamentary bills and draft regulations

During the 2002-2003 fiscal year:

8 draft regulations were examined:

The Québec Ombudsman submitted her comments to the administrator responsible for the following regulations:

1. Regulation amending the Regulation respecting the reimbursement of certain expenses (SAAQ)

2. Regulation amending the Regulation respecting reduced contributions (MFE)

3. Regulation amending the Regulation respecting childcare centres (MFE) and

4. Regulation amending the Regulation respecting day care centres (MFE)

14 parliamentary bills were examined:

The Québec Ombudsman submitted comments to the Minister responsible for the following bills:

1. An Act respecting the Québec correctional system

2. An Act to impose restrictions on pig farming

3. An Act to amend the Act respecting the Québec Pension Plan and other legislative provisions and

4. An Act to amend the Act respecting the Pension Plan of Certain Teachers

Lastly, the Québec Ombudsman tabled a brief before the parliamentary committee regarding Bill 80, "Lobbying Transparency and Ethics Act". The following section summarizes the Québec Ombudsman's intervention regarding this crucial facet of a democratic society.

The Bill 80 "Lobbying Transparency and Ethics Act": position of the Québec Ombudsman

During the April 2002 session of the National Assembly, the Minister of Justice and Attorney General of Quebec tabled Bill 80 regarding lobbying transparency and ethics which aims to "monitor lobbyists' activities" in general.

Since the Québec Ombudsman has a vested interest in anything affecting the quality of democracy which is the full exercise of citizenship, it examined the Bill closely. In May 2002, the Québec Ombudsman presented its comments to the National Assembly's parliamentary committee of public finance during a public consultation session on the Bill. This outlines the main issues addressed in the Québec Ombudsman's brief, including her recommendations as well as the reception they received.

Considering that the public and the media generally view lobbying in a negative light, the Québec Ombudsman's first remarks highlighted the democratic legitimacy of this practice. Consequently, it recommended that the law be more explicit in recognizing that lobbying is a legitimate activity in a democracy.

The Québec Ombudsman based its arguments on two principles that it also considers as ultimate goals to be reached. The first principle aims for the greatest possible transparency while conducting lobbyist activities. The second is the equal treatment of all citizens or groups of citizens who, in the Québec Ombudsman's opinion, should all be governed by the same lobbying conditions and restrictions.

The Québec Ombudsman felt that these two basic principles were not addressed appropriately in Bill 80. In truth, only profit-making companies and organizations, or groups of such organizations, were viewed as potential lobbyists. Contrary to North American reality, labour unions, professional corporations, and ideological or humanitarian organizations were not viewed as interested in lobbying, unless they hired an external lobbyist consultant, who then was the only one held accountable for his or her lobbying activities.

Aside from this one exception, the lobbying efforts of labour unions, professional corporations and other non-profit organizations were deemed to be purely altruistic and therefore unaffected by the law.

The Québec Ombudsman found this point of view at the very least naïve. For one, it seemed obvious that the very mission of unions and professional corporations is to promote their members' interests. For another, admittedly, while most people who defend a vast array of meaningful, and even noble, causes do so altruistically, the past has shown that self-interest is often a factor. It must also be noted that lobbying activities, regardless of the person or group initiating them, tend to influence public policies, which affect the entire population and whose costs are paid for out of the wallets of the taxpayers in general. For all of these reasons, the Québec Ombudsman disputed the "double-standard" found in this approach and recommended that the law be the same for all: profit-making companies as much as unions, professional corporations, ideological, humanitarian, religious or other organizations.

Bill 80 also stipulates that previous holders of public office should not engage in lobbying activities for an amount of time proportionate to the importance of the position previously held. Such provisions are completely reasonable and justified. Nevertheless, the Québec Ombudsman was surprised to find that these restrictions apply only to those who become consultant lobbyists.

Those restrictions did not affect those who, upon leaving the public office, were immediately employed by companies or organizations could in fact begin lobbying (even full-time). The Québec Ombudsman believed that the risks of "cronyism" and undue influence were just as great in any case; it therefore recommended that the same restrictions be applied to all categories of lobbyists.

Finally, the Québec Ombudsman questioned the fact that the lobbying commissioner can only investigate and issue recommendations regarding the conduct of lobbyists and not that of public office holders who could nonetheless be as witnesses or asked to submit certain documents in the course of said investigations. Without submitting a formal recommendation for this issue, the Québec Ombudsman did share its concerns with the legislator, stating that such investigations would as a result be incomplete by revealing only lobbyists' wrongdoings while avoiding those committed by public office holders, and consequently treating one of the parties involved unfairly. The media responded positively to the Québec Ombudsman's intervention.

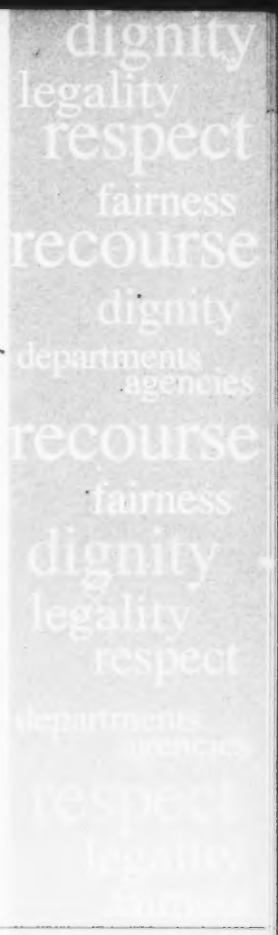
The legislator agreed to stress further the legitimacy of lobbying activities and to include labour unions, professional corporations, ideological and other non-profit organizations as potential lobbyists.

However, as authorized by its regulative jurisdiction, the government subsequently excluded all ideological, humanitarian, religious or other non-profit organizations from the act's coverage.

The Québec Ombudsman cannot explain the reasons for such a reversal, especially since it compromises the degree of transparency as much as the equality of all before the law.

For reasons unknown, the legislator refused to apply these same principles of transparency and equality to the restrictions governing previous holders of public office before becoming lobbyists.

On the whole, the Québec Ombudsman feels that Bill 80 is a first step in the right direction. Experience will help us improve it over the next few years.



4

Public and media relations

The Québec Ombudsman participates regularly in a variety of public events in order to improve the general public's understanding of its role and the recourses that the institution provides to citizens or groups of citizens who feel wronged by administrative authorities. It also grants media interviews to explain its stance on various issues or discuss a specific problem.

Media Relations:

The Québec Ombudsman gave over forty interviews to representatives of print and electronic media in the course of fiscal year 2002-2003, during public affairs programs, news features or following the press conference held after the release of its previous annual report.

Public Events:

With a view to promote the institution and increase public awareness of its mandate, the Québec Ombudsman took part in several meetings, symposia and "open houses" held throughout the Province.

New Promotional Tools

This year, the Québec Ombudsman purchased an information booth to be used during public events. In addition, two posters were produced and will be on display at future symposia and conferences.

A new brochure entitled "Do you know your Québec Ombudsman?" was published in 2002, along with a promotional bookmark.

Lastly, the Québec Ombudsman's Chronicle was updated, publishing two new issues during the course of the year, one in the fall of 2002 and another in winter of 2003.

Addresses given by Québec Ombudsman:

The Québec Ombudsman and her personnel regularly participate in conventions, conferences or symposia. During the 2002-2003 fiscal year, the Québec Ombudsman addressed several groups

with the aim of raising awareness and stimulating discussion on the expectations of citizens and the difficulties they encounter when dealing with administrative authorities:

April 29, 2002: "Le rôle et mandat du Protecteur du citoyen" [The Role and Mandate of the Québec Ombudsman]. Fédération des comités de parents de l'île de Montréal, Quebec.

June 7, 2002: "Le consentement à la recherche chez les personnes inaptes" [Consent to Research by Citizens Deemed Incapable]. Sherbrooke Geriatric University Institute, Magog, Quebec.

June 13, 2002: "Le Protecteur du citoyen, son rôle, son pouvoir, son action" [The Role, Authority and Activity of the Québec Ombudsman]. Table des avocats de la CSST, Longueuil, Quebec.

September 19, 2002: "Les attentes du citoyen" [Citizens' Expectations]. VIIIe Congrès annuel de la Conférence des juges administratifs du Québec, Quebec.

October 24, 2002: "Le rôle et le mandat du Protecteur du citoyen" [The Role and Mandate of the Québec Ombudsman]. Centre des femmes de Montréal, Quebec.

October 31, 2002: "Un bureau des plaintes légitime et crédible" [A Legitimate, Credible Complaints Office]. Colloque Impact 2002, Québec, Quebec.

November 12, 2002: "Le rôle et le mandat du Protecteur du citoyen" [The Role and Mandate of the Québec Ombudsman]. Centre de formation professionnelle de Lévis, Quebec.

December 3, 2002: "Le rôle et le mandat du Protecteur du citoyen" [The Role and Mandate of the Québec Ombudsman]. Centre communautaire des femmes sud-asiatiques, Montréal, Quebec.

February 18, 2003: "Le rôle et le mandat du Protecteur du citoyen" [The Role and Mandate of the Québec Ombudsman]. Comité des travailleurs et travailleuses accidentés de l'Estrie, Sherbrooke, Quebec.

February 20, 2003: "Le rôle et le mandat du Protecteur du citoyen" [The Role and Mandate of the Québec Ombudsman]. Carrefour Mousseau, Longueuil, Quebec.

March 20, 2003: "Le rôle et le mandat du Protecteur du citoyen" [The Role and Mandate of the Québec Ombudsman]. Information session for ÉNAP students enrolled in the course "Principes et enjeux de l'administration publique", National Assembly of Québec.

April 1, 2003: "Redresser les torts, obtenir réparation pour les plaignants et plaignantes" [Righting Wrongs and Obtaining Compensation for Complainants]. First Annual Conference of the Forum of Canadian Ombudsman, Ottawa, Ontario.

5

The Québec Ombudsman's national and international activities

Like many of its counterparts, the Québec Ombudsman helps maintain and reinforce the rule of law, thereby contributing to the rise of democracy, and to the promotion and the defence of human rights.

The recognition of the dignity of the individual is the cornerstone of the notion of rights and freedoms. No society can claim to be civilized if it does not protect human dignity. And how can the value of a right be assessed, if not in practice? Enshrining the idea in texts, constitutions, charters and declarations is not enough. Mechanisms such as ombudsman institutions must be established to monitor the application of human rights.

The Québec Ombudsman is an active member of five professional ombudsman associations that pursue the same objectives: promoting the ombudsmanship, supporting existing institutions, training staff, fostering research and disseminating information.

The International Ombudsman Institute

Founded in 1978, the International Ombudsman Institute (IOI) is a worldwide organization of ombudsman offices, currently comprising 242 members. Its head office is located at the University of Alberta in Edmonton. Its Board of Directors meets yearly and a members' conference is held every four years. The Québec Ombudsman shall host the IOI Board of Directors meeting from September 30 to October 3, 2003 and the VIIIth International Conference from September 7 to 10 in 2004.

L'Association des Ombudsmen et Médiateurs de la Francophonie (AOMF)

The Association of Ombudsmen and Mediators of French-Speaking Countries (AOMF) brings together ombudsmen and mediators from the French-speaking world. It has offices in Paris and Québec City and is currently made up of 40 members. The AOMF was founded through the initiative of the Médiateur de la République française and the Québec Ombudsman in 1997, with the collaboration of the Québec Government and the Agence de la Francophonie. The Association's Board of Directors meets annually and a members' conference is held every two years. The next conference will be hosted by the Médiateur de la Tunisie in October of 2003.

The Canadian Council of Parliamentary Ombudsman

Canadian parliamentary ombudsman offices, which were previously all members of the Canadian Ombudsman Association (COA), took the initiative to create a new association entitled the Canadian Council of Parliamentary Ombudsman. The Canadian Ombudsman Association will disband and be replaced with the newly formed Council.

The United States Ombudsman Association

The Québec Ombudsman is also an institutional member of the United States Ombudsman's Association (USOA), which was founded in 1977 and unites ombudsmen from throughout the United States and Canada. The USOA will host its 24th Annual Conference in Hawaii from September 16 to 19, 2003.

The Canadian Ombudsman Forum

The Canadian Ombudsman Forum is a newly-formed professional association that brings together parliamentary, corporate, university and college ombudsmen, as well as people who are interested in the ombudsman concept. The COF is headed by a board of directors and holds a general meeting of its members every year. The Forum now includes 47 members. The Québec Ombudsman has been a member of the Forum since September 2001. The COF held its first conference from March 30 to April 2, 2003, in Ottawa.

Main activities of the Québec Ombudsman in 2002-2003

Three representatives of the Québec Ombudsman office, the Deputy Ombudsman, the Investigations' Director of the Montréal office and a delegate, participated in the 23rd USOA Annual Conference held in Chicago from October 1 to 4, 2002. The 2002 Conference theme explored quality requirements of ombudsman offices and the level of quality that public services should offer.

The Québec Ombudsman and her Secretary-General attended the International Ombudsman Institute's (IOI) Board of Directors meeting held in Tunisia from October 13 to 16, 2002.

From October 16 to 18, 2002, two Québec Ombudsman's delegates took part in a workshop organized by the Manitoba Ombudsman held in Winnipeg. The workshop's theme was: "Diversity, Challenge and Change in Ombudsmanship".

The American Bar Association's 2002 Annual Meeting, held in Washington from October 16 to 18, 2002, explored the theme of "Evolution of Ombudsman Worldwide". The Québec Ombudsman's Legal Advisor attended this event on behalf of the Québec Ombudsman.

From October 22 to 26, 2002, the Québec Ombudsman participated in l'Association des Ombudsmans et Médiateurs de la Francophonie (AOMF) Board of Directors meeting. The meeting was held in Courmayeur in the Aosta Valley and hosted by Mrs. Maria Grazia Vacchina, mediator of the Aosta Valley in Italy and Secretary-General of the AOMF. The Québec Ombudsman's Secretary-General attended this meeting.

From October 24 to 26, 2002, a meeting of Canadian ombudsmen's legal advisors was held in Toronto. The Québec Ombudsman's Legal Advisor was present at this event.

The Québec Ombudsman took part in the annual Conference of the Canadian Ombudsman Association in Victoria from March 5 to 7, 2003. The Ombudsman of British Columbia, Mr. Howard Kushner, hosted the conference.

The first Annual Conference of the Forum of Canadian Ombudsman (FCO) was held in Ottawa from March 30 to April 2, 2003. The Québec Ombudsman was invited to give a speech entitled: "Redresser les torts: obtenir réparation pour les plaignants et plaignantes" [Righting Wrongs and Obtaining Compensation for Complainants]. The Legal Advisor to the Québec Ombudsman participated in a series of discussions regarding "The Foundations of Law Respecting the Role of Ombudsman". The Deputy Ombudsman, the Secretary-General, the Investigations' Director of the Québec Office, as well as two delegates, also took part in this conference.

Guests welcomed by the Québec Ombudsman in 2002-2003

On October 30, the Legal Advisor to the European Court of Human Rights, Mr. Michel de Salvia, was welcomed along with a representative of the Ministère des Relations internationales du Québec.

The Ombudsman of Thailand, Mr. Poossup Piva-Anant, visited the Québec Ombudsman on November 4 and 5, 2002, during his tour of Canadian ombudsman offices.

Mr. Clare Lewis, Ontario Ombudsman and President of the International Ombudsman Institute, met with the Québec Ombudsman in her Montréal office on February 5, 2003.

For training purposes, Mrs. Vivian Hui-Wen-Cheng, secretary of the International Affairs Committee of Taiwan, asked the Québec Ombudsman for permission to translate the institution's 2001-2002 report entitled "A Legitimate, Credible Complaints Office" in Chinese. The Québec Ombudsman accepted this request with great pleasure.

6

Management report

In accordance with the Public Administration Act that the Québec Ombudsman has decided to submit itself to, the Management Report provided herein is compliant with the requirements of said Act.

Administrative data

6.1 Administrative structure

Ombudsman
Pauline Champoux-Lesage

Deputy Ombudsman
Lucie Lavoie

General Secretariat
André Sasseville

Human Resources and Administrative Branch
Richard Sirois

Investigations Branch
Quebec City Office
Francine Larouche

Investigations Branch
Montreal Office
Jean-Marie Mercier

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6.1 Administrative structure

Ombudsman

Deputy Ombudsman

General Secretariat

Human Resources and Administrative Branch

Investigations Branch
Quebec City Office

Investigations Branch
Montreal Office

6.2 Resource management

6.2.1 Human resources

In 2002-2003, the Québec Ombudsman had a staff of 94 authorized employees. As of March 31, 2003, these positions were distributed as follows:

	Special appointments	Senior managers	Middle managers	Technicians	Support staff	Total
Office of Ombudsman and Deputy Ombudsman	2	1	4		3	**10**
Service Quality Commissioner		1				**1**
Legal Advisor			1	1	1	**3**
General Secretariat		1			1	**2**
Human Resources and Administrative		1	5	4	3	**13**
Reception		1		1	5	**7**
Investigations – Québec		3	16	7	5	**31**
Investigations – Montréal		1	13	11	2	**27**
Total	**2**	**9**	**39**	**24**	**20**	94

In addition, several temporary employees joined the permanent staff members last year in their efforts to assist the Québec Ombudsman in effectively completing its mission. Once again, the Québec Ombudsman welcomed four law students as interns for a 6 month paid internship.

Maintaining skills and professional development have been and remain a priority for the Québec Ombudsman. The annual plan for human resources development provided a total of 442 person-days of training, broken down as follows:

- 147 days of collective training on different topics related to the development goals established for the year
- 75 days of office technology training and
- 220 days of individual training needed to update job-specific skills

This training amounted to an investment of $43,000, which is the equivalent of 4.7 days and $475 per employee.

The Québec Ombudsman took particular pains last year to improve work conditions and the job atmosphere. An evaluation questionnaire was developed for that purpose and its results have revealed significant improvements to the job atmosphere over the last two years (a similar survey was conducted in August 2000) and have brought to light other issues requiring our attention. An action plan was submitted and executed in collaboration with the work organization committee, contributing marked improvements to the employees' work conditions. The Québec Ombudsman intends to carry on with these improvements next year as well.

6.2.2 Financial resources

The funds allocated to the Québec Ombudsman by the National Assembly for fiscal 2002-2003 were spent in the following ways:

The Québec Ombudsman's Budget

Expenditure Statement for the Fiscal Years Ended March 31, 2002 et 2003		
	2001-2002 ($)	2002-2003 ($)
STAFF		
Regular and temporary employees	4 756 653	5 096 804
Employer's contributions	486 227	471 567
Pensions for former ombudsmen and deputies	153 010	206 523
Total	**5 395 890**	**5 774 894**
OPERATIONS		
Transportation and communications	406 835	428 880
Professional and administrative services	178 482	250 053
Maintenance and repairs	14 329	72 685
Rent and leasing fees	813 525	666 969
Goods and supplies	87 274	81 976
Material and equipment	127 018	120 931
Amortization	104 308	130 605
Other expenditures	2 445	73 736
Total	**1 734 216**	**1 825 835**
CAPITALIZATION		
Computer technology development	20 181	54 591
Material and equipment	61 879	88 260
Total	**82 060**	**142 851**
Grand total	**7 212 166**	**7 743 580**

The above statement shows several significant variations compared to the previous fiscal year:

- *Professional and administrative services* expenses increased due to human resource development, activities for judicial training, and particularly regarding computer technology. Computer technology training was necessary since the mana-gement system for our investigation case files is nearing obsolescence. Considerable maintenance work was needed and preliminary studies for a system overhaul were carried out.

In regards to *Maintenance and repairs*, the increase in expenses were due to renovations required to improve office security, ergonomics and space utilization.

- *Rent and leasing fees* were revised and lowered by the Société immobilière du Québec.

- *The other expenditures category* includes the out-of-court settlement paid once an agreement was reached between two parties.

Lastly, *Capitalization* expenses were increased following the development of a new computer system that now permits the precise monitoring of recommendations made by the Québec Ombudsman.

The following table shows the distribution of financial resources through the lens of the Québec Ombudsman's administrative structure and work organization.

Breakdown of 2002-2003 Expenditures

	Pers.	Expenses		Total	%
		Salaries	Operations		
Legal office and mission support	13	$ 903 921,39	$ 228 223,28	$ 1 132 144,68	15 %
Direct services — Reception	7	$ 316 360,54	$ 122 889,46	$ 439 250,00	6 %
Qc. investigations	31	$ 1 945 581,97	$ 544 224,75	$ 2 489 806,72	34 %
Mtl. investigations	22	$ 1 436 848,97	$ 474 002,20	$ 1 910 951,17	26 %
Communications	3	$ 240 790,87	$ 52 666,91	$ 293 457,78	4 %
National and international activities			$ 45 000,00	$ 45 000,00	0,6 %
Administration	13	$ 724 765,91	$ 228 223,28	$ 952 989,20	13 %
(Depreciation)			$ 130 606,00	$ 130 606,00	2 %
Total:	**94**	**$ 5 568 369,66**	**$ 1 825 835,89**	**$ 7 394 206,55**	**100 %**

Note: this table does not include capitalization expenses or pensions for former ombudsmen and deputies.

6.2.3 Material resources

The Québec Ombudsman had office renovations done during the 2002-2003 fiscal year in its Québec and Montréal offices. This work was done primarily to correct security and ergonomic problems in the reception area of the Montréal office, but also in order to create a more logical and efficient use of the work space.

6.2.4 Information resources

The most important computerized tool assisting the Québec Ombudsman in its mission – the system used to manage case file investigations – was increasingly less efficient at the meeting the office's organizational needs and was not sufficient for monitoring commitments made in accordance with the Public Administration Act. Moreover, the system was based on obsolete technology that will no longer be supported by technology suppliers. To obtain a more efficient tool, the Québec Ombudsman conducted preliminary studies before modifying the system and implemented several procedures designed to better manage the office's information resources.

The preliminary work plan was based on a diagnostic study of the existing computer systems. Several elements of the plan were implemented, such as developing the framework for the management of digital information, internal policies regarding security and the use of information resources, as well as mandating consultants to determine which technological direction and development tools are to be implemented.

Additionally, a seasoned computer analyst was chosen to head the computer technology team as well as a system driver. As well, a good number of the work and management processes have been defined.

The preliminary analyses and a design of the system architecture should be completed during the 2003-2004 fiscal year, before beginning the design work and implementation of the new case file management system.

6.3 2001-2004 strategic plan

The Québec Ombudsman's strategic plan is based on the following four objectives:

Firstly, reaffirming its commitment regarding the services provided directly to citizens;

Secondly, promoting preventive and proactive procedures an order to avoid any detrimental effects to citizens;

Thirdly, ensuring that its recommendations are implemented; and

Finally, guaranteeing the concerted efforts and efficiency of the entire organization.

2002-2003 Results

Objective 1: Reaffirming the Québec Ombudsman's commitment regarding the services provided directly to citizens.

Provide quality services that meet the legitimate expectations of the public.

INDICATOR: The number of complaints regarding the Québec Ombudsman's services for which corrective measures were applied.

RESULTS: During 2002-2003, 29 complaints were deemed valid. In each case, corrective measures such as supplemental investigative procedures, letters of apologies for excessive delays or accelerated processing of case files were applied.

OTHER ACTIONS: In the case of 12 unfounded complaints, the Québec Ombudsman deemed it necessary to "go the extra mile" and re-establish communication with the citizen by providing additional explanations or other service improvement measures.

INDICATOR: Extent to which the 2002-2003 communications plan was implemented.

RESULTS: New promotional tools were designed and used throughout the year. The institution participated in 3 day-sessions conducted by the Ministère de la Justice in Saint-Jean-sur-Richelieu, Rivière-du-Loup and Montmagny, as well as in the "semaine du Barreau" [Law Society Week] in Montréal (a 4-day event).

The institute was also present for the "Odyssée de la retraite" in Gatineau.

The Québec Ombudsman toured the Saguenay — Lac St-Jean region in April of 2002 to promote the institution, namely through community television appearances.

OTHER ACTIONS: In order to improve its reception services, the institution reviewed its procedures and responsibilities and trained relevant personnel to better inform citizens about appropriate actions to take when their complaint falls beyond the scope of the Québec Ombudsman's jurisdiction.

Objective 2: Maximize the Québec Ombudsman's influence by promoting preventive and proactive procedures.

Increase cooperation between government departments and agencies and encourage public institutions to process citizens' complaints themselves.

INDICATOR: Availability of a feedback tool for government departments and agencies and providing support for the development of credible complaints offices.

RESULTS: A feedback tool for government departments and agencies is currently being tested which should facilitate the understanding of the

contents and results of complaints processed through the Québec Ombudsman's organization. It should also contribute to the prevention of complaint producing situations.

A guide produced by the Québec Ombudsman entitled "A Legitimate, Credible Complaints Office" is presently being reprinted – which reflects the guide's popularity. The authors of this guide took public action twice and found their requests for support answered.

Strengthen the Québec Ombudsman's role as a parliamentary advisor.

RESULTS: All bills were systematically analysed, thereby prompting the appropriate interventions, as described herein.

Guarantee the continuous review of complaints in order to execute, as quickly as possible, the most urgent interventions.

INDICATOR: Statutory meetings and follow-ups.

RESULTS: Two reviews of active case files were performed (in autumn and spring) and an analysis of systemic issues was carried out in order to identify the priorities.

OTHER ACTIONS: Discussions with certain government departments and agencies regarding case files under review gave the institution the opportunity to intervene as case files were being the processed and to comment on policies as they were being implemented. Such was the case with the Public Curator with regards to the management of private trusteeship or curatorship cases and with the Régie des rentes which shared its analysis of the situation and its progress, and submitted the avenues it was considering for the future.

Objective 3: Maximize the Québec Ombudsman's influence by ensuring that its recommendations are implemented.

Establish general criteria for evaluating levels of equality and "reasonableness" in order to define specific methods for analysis.

Develop and implement computer technology to monitor official recommendations submitted by the Québec Ombudsman.

INDICATOR: Once a policy document and computer software has been produced.

RESULTS: A document concerning equity and "reasonableness" was written and will be used as a reference guide for interventions made by delegates of the Québec Ombudsman, thereby ensuring consistency and transparency within the institution.

The codification of closed case files was modified in accordance with this reference guide for greater consistency and accountability.

A computerized trend chart will now allow the institute to measure the effects of the Québec Ombudsman's interventions.

Objective 4 : Increase the concerted efforts and efficiency of the entire organization.

Improve work organization, internal communications and training opportunities, encourage cooperation and ensure that performance evaluations are completed.

The priorities for 2002-2003 were to achieve the following:

- an internal communications plan
- a personnel training plan
- a review and distribution of duties
- a performance management guide and
- a computer management master plan.

RESULTS:

The communications plan was completed and included:

- two general staff meetings;
- the internal newsletter distributed over the institution's intranet was improved so that all staff members could follow the progress of major case files, and remain abreast of staff activities and successful interventions.

Providing training for our personnel continues to be an important objective as it ensures the continuity and development of the organization's efficiency. While it comprised 1.35% of total payroll expenditures for the 2000-2001 fiscal year, in accordance with Bill 90, staff training expenses increased to 1.99% for 2001-2002 and to 2.23% during last fiscal year.

An annual development plan was implemented to permit each employee to obtain and maintain the skills and qualifications necessary for their work and guarantee a high quality service to citizens. In addition to individual training, collective training sessions for the benefit of the entire staff or for specific groups of employees to develop skills relevant to the institution's priorities and objectives included the following topics: interventions with difficult clients, disclosure of personal information in case of emergency, team work and conflict management, codification of investigation case files, administrative assistance and the use of computer technology. Depending on the topic, the above collective training sessions were open to all personnel.

In both the Québec and Montréal offices, redistribution of the workload was monitored.

The management personnel received a performance management guidebook and were informed of new performance expectations.

Lastly, a master plan for the information system was approved.

OTHER ACTIONS: Work organization committee activities continued throughout the year, contributing, for one, to the analysis of a survey regarding job atmosphere in the institution with the goal of producing specific recommendations. The results of this analysis included a campaign to build awareness for respecting work space and suggestions for rearranging the layout of shared space, some of which have already been implemented.

6.4 The service statement

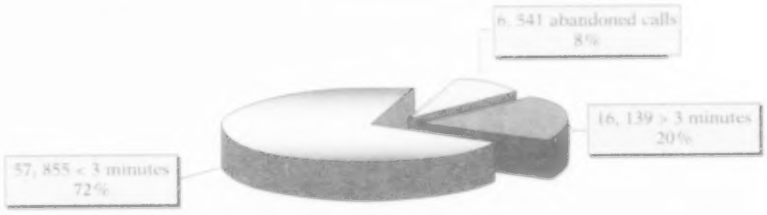
In its Service Statement, the Québec Ombudsman undertook to offer accessible and high-quality services and to process requests promptly and with respect. The results of its efforts in this regard, in as much as current data can measure, are summarized below:

Telephone accessibility

The Québec Ombudsman guarantees that a staff member will respond to a citizen's call within a maximum time of 3 minutes.

In 2002-2003, the institution received 80,535 phone calls and responded to nearly 72% of them within three minutes. Of this number, 88%, or 51,002 calls, were not put on hold at all.

Telephone contact with a staff member of the Québec Ombudsman within three minutes



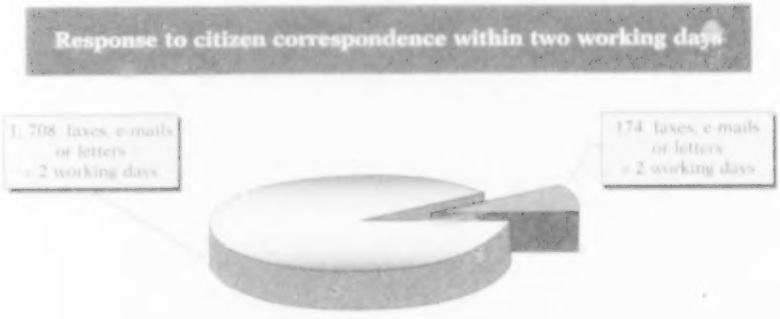
The Québec Ombudsman aims to improve this performance next year by increasing the rate of call response within 3 minutes to 75%.

Diligence

The Québec Ombudsman responds to citizens' letters within two working days.

In April of 2002, the Québec Ombudsman acquired a computer system to monitor the institution's response time to citizen correspondence sent by fax, Internet or by mail.

During the 2002-2003 year, 91% of citizen correspondence was answered within two working days.


Response to citizen correspondence within two working days
1,708 faxes, e-mails or letters ≤ 2 working days
174 faxes, e-mails or letters > 2 working days

It is the Québec Ombudsman's intention to maintain such a performance for the next year.

Service requests to be processed promptly

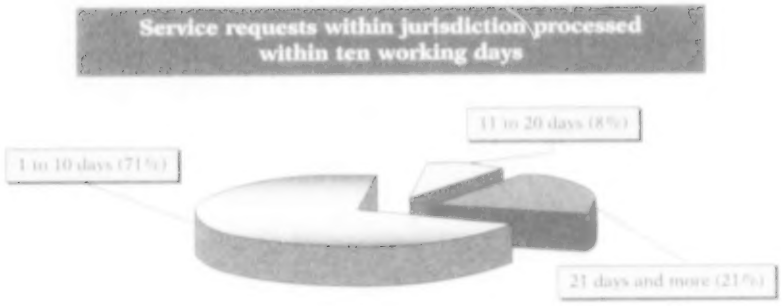
The Québec Ombudsman can only intervene with government departments and agencies. Consequently, the Québec Ombudsman will inform the citizen that his or her request for service is within his jurisdiction or, if it is not, direct the citizen towards the appropriate authorities within two working days.

From 2002 to 2003, 96% of service requests not under the Québec Ombudsman's jurisdiction were processed within two working days.

It is the Québec Ombudsman's intention to maintain such a performance.

Service requests within the Québec Ombudsman's jurisdiction are processed within ten working days.

From 2002 to 2003, 71% of service requests under the Québec Ombudsman's jurisdiction were processed and resolved within ten working days; 8% were resolved within 11 to 20 working days; 21% took an excess of 21 working days to get resolved. This last statistic is due to the nature of certain complaints whose processing is complex and where resolution requires time.



It should be noted that our statistics are based on cases closed during fiscal 2002-2003 and this include 1,023 cases from preceding fiscal years.

It is the Québec Ombudsman's intention to maintain such a performance for the next year.

6.5 Service Quality Commissioner's Report

In the event of dissatisfaction with the nature or quality of the services provided by the Québec Ombudsman, as well as with regard to personnel behaviour, the citizen can file a complaint with the Québec Ombudsman's Service Quality Commissioner.

The Québec Ombudsman undertakes to process each complaint received with the greatest open-mindedness, complete confidentiality and impartiality, within twenty working days. Should the complaint require a longer period of time, the Québec Ombudsman will

inform the citizen of the approximate time still needed to process his or her complaint and, if applicable, the reason for which such an additional time is required.

In 2002-2003, the Service Quality Commissioner received 159 complaints from 121 people. Certain complaints included several reasons for dissatisfaction. On the whole, 214 reasons for complaint were reviewed.

In spite of the increase in the number of complaints (97 in 2001-2002) for the year in general, a downward trend for the last two quarters is apparent:

First quarter:	48 complaints received
Second quarter:	52 complaints received
Third quarter:	34 complaints received
Fourth quarter:	25 complaints received

Recommendations

The Service Quality Commissioner met all personnel twice in order to present her recommendations.

1. Behaviour

The Service Quality Commissioner stressed the importance of professional and courteous human relations, remembering everyone that citizens have high expectations in this respect.

Her recommendation that exchanges take place on topics related to this aspect of daily work lead to a discussion workshop.

The Service Quality Commissioner also recommended that further discussions take place between her and the management staff in order to establish measures to help staff members experiencing relationship problems with clients.

The Service Quality Commissioner intervenes increasingly in a preventive manner, at the request of management personnel.

2. Respecting privacy in the exercise of the powers of commissioner of inquiry by Investigation personnel:

The Service Quality Commissioner recommended the creation of a "Guide to good practices in exercising the powers of

Commissioner of inquiry" to be integrated into the "Manuel sur le traitement des demandes d'intervention" [Guide to processing service requests], which already covers this issue at great length.

Follow-up on recommendations included in the 2001-2002 Annual Report:

- File-keeping: an action plan was created; and
- The commitment stated in the Service Statement was subject to repeal.

6.6 Access to information and personal information

Implementation of An Act respecting Access to documents held by public bodies and the Protection of personal information

Pursuant to the Government Action Plan for the protection of personal information, every government department or agency must evaluate its measures for the protection of personal information annually and include the results in their annual reports.

Awareness-building and training activities in 2002-2003

Following the adoption of Bill 180 (An Act to amend various legislative provisions as regards the disclosure of confidential information to protect individuals), an administrative policy governing the disclosure of personal information was drawn up and communicated to the entire staff.

Awareness-building activities were conducted during the "Semaine de la Protection des renseignements personnels" [Personal Information Protection Week] from November 11 to 15, 2002 on the topic: "La protection des renseignements personnels : on s'en souvient" [The protection of personal information: we shall not forget].

Last year, the Québec Ombudsman had mentioned that she had mandated a computer security consulting company to evaluate

the security of her information systems and propose improvements, if necessary.

The firm's report did not reveal any serious security risks to the Québec Ombudsman's information system.

Furthermore, it recommended the adoption of administrative policies designed to formalize procedures and ensure that the entire staff was well informed of the rules.

The following policies and guidelines were adopted:

- Policy regarding the use of information resources;
- Policy regarding the security of numeric data; and
- Guideline on the use of the Internet and e-mail.

Lastly, an overall policy covering all aspects of confidentiality was drafted by the "Comité de protection des renseignements personnels" [Committee for the protection of personal information].

Priorities for 2003-2004

The Québec Ombudsman's priorities for the 2003-2004 fiscal year are as follows:

- Adoption of an overall policy regarding confidentiality;
- An awareness-building week focusing on the protection of personal information; and
- Specific training of the Québec Ombudsman's Investigations Branch personnel regarding the implementation of the Act respecting Access to documents held by public bodies and the Protection of personal information, and how the application of the law affects their responsibilities.

Requests for document access statistics

Over the course of the 2002-2003 fiscal year:

46 requests concerning the Act respecting Access to documents were submitted to the Québec Ombudsman.

Of the 46 requests:

35 were requests for access to personal information;

10 were requests for access to various documents (statistics, briefs, reports, other information relating to statements issued by the Québec Ombudsman, etc.); and

1 was a request for a decision issued by another organization to be reexamined (this request was transferred to the Commission d'accès à l'information, the only organization authorized to review decisions made by government departments and agencies concerning document access issues).

Five-year statistical summary

2002-2003: 46 access requests
2001-2002: 30 access requests
2000-2001: 30 access requests
1999-2000: 30 access requests
1998-1999: 28 access requests

6.7 Follow-up to the Auditor General's report on the Québec Ombudsman's management performance

The Auditor General examined the Québec Ombudsman's management performance in 2000, and issued his report in February-March of 2003, stating that the Québec Ombudsman had taken action on all of his recommendations. The Auditor General judged that 90% of the recommended changes had satisfactory results, which reflects the significant efforts made by the Québec Ombudsman's personnel. The institution undertakes to complete this work as quickly as is feasible.

6.8 Collaborators

The Québec Ombudsman would like to extend her thanks to all her collaborators, of all whom, at one point or another during the year, contributed to the fulfillment of the Québec Ombudsman's mission. The team members are:

ALAIN Aline
ALARIE Pierre
ANTILA Kim
ARCHAMBAULT Marie-France
AUGER Jacques L.
BAILLARGEON Rita
BEAUPRÉ Claire
BÉDARD Jean-Pierre
BÉGIN Marcel
BÉLANGER Claude
BERGERON Ann
BLACKBURN France
BLAIS Chantal
BOIVIN Isabelle
BOLDUC Yves M.
BOUCHARD Dominique
BOULANGER Annie
BOULIANNE Josée
BOURGET François
BOUTHILLETTE Jannick
BOUTIN Andrée
BUSQUE Andrée
BUSSIÈRES Jo-Anne
CAILLOUX Mariette
CARON Danielle
CHARTRAND Louise
CHASSÉ Lyne
CLÉMENT Sylvie
CÔTÉ Valérie
CUSSON DESJARDINS J.
DAGUERRE André
D'AMOURS Jacinthe
DAOUST Geneviève
DE PASSILLÉ Philippe
DEMERS Marie-Christine
DESCHÊNES Lyne
DESGAGNÉ Sabrina
DUBUC HICKEY Diane
DUFOUR Francine
DUGUAY Suzanne
FALARDEAU Louise
FORTIN Constance
FOURNIER Berthe
GAGNON Lucie
GAGNON Suzanne
GAUGUIN Christine
GENDRON Claire
GOSSELIN Dorys
GOSSELIN-GRANT Jessy
GUAY Robert
HUDON SZIGETI Frances
LABELLE Denise
LABERGE Serge
LABONTÉ Michel
LACHANCE Alain
LADOUCEUR M.-C.
LALIBERTÉ Guy
LALIBERTÉ Martine
LAMY Micheline
LANGLOIS Claire
LAQUERRE Nathalie
LAROUCHE Francine
LAROUCHE Francyne
LAVOIE Karen
LAVOIE Lucie
LEBLANC Kim
LEROUX Chantal
LESSARD Michèle
LEVAC Lucie
LIRETTE Marlène
LYNCH Micheline
MACDONALD Guy
MATHIEU Marie-Ève
MAYER Lise
McKAY GAGNÉ Louise
McNICOLL Micheline
MERCIER Jean-Marie
MORIN Pierre
NADEAU Julie
NADEAU Lorraine
NORMAND Margaret
NUNEZ Égidio
OSTIGUY Manon
PAGÉ Guy
PAQUET Jean-Claude
PAQUETTE Louise
PÉLOQUIN Marie-José
PICARD Suzanne
PILON Diane
PLANTE Patrick
POULIN Lucie
PRATTE Valérie
PRÉVOST France
RACETTE Anne-Marie
RENAUD Johanne
RICARD Stéphanie
RIOUX Sophie
ROBIN Julie
ROUFFIGNAT Denise
ROUSSEAU Fernande
ROUX Hélène
SASSEVILLE André
SÉVIGNY Monique
SINCLAIR Gaétane
SIROIS Richard
SWEENEY Linda
TALBOT Suzanne
THÉROUX Sylvie
TOUCHETTE Stéphane
TREMBLAY Karine
TREMBLAY Mona
TURCOTTE Sylvie
VALLIÈRE Catherine
VINCENT Céline
WAZEN Shadi J.
WENTSER Georges

6.9 Statistics

The principal activities of the Québec Ombudsman's Investigations Branch are summarized in the following pages.

In order to make the statistics more readily understandable, we have provided explanations for our modifications to file statistics found in the tables and figures and included summary definitions of the file categories used in the new codification.

Modifications to file statistics

In previous years, statistical calculations grouped files initiated by the Québec Ombudsman with requests submitted by citizens. However, statistics for 2002-2003 exclude files initiated by the Québec Ombudsman – with two exceptions: the total number of active files at the beginning of the year and the total number of requests (as indicated in Figure 1). These two exceptions were made in order to maintain consistency with previous years' statistics.

Another modification to the 2002-2003 file statistics is the addition of the number of files re-opened and re-closed during the year. As a result, a comparison with the previous year's figures was not performed.

Lastly, with the exception of Table 3 which indicates the number of ineligible requests by sectors (private, federal, networks, etc.), all other tables and figures only include only those requests that fell under the Québec Ombudsman's jurisdiction.

Summary definitions of file categories

Ineligible request: A request submitted to the Québec Ombudsman deemed to be relevant to an organization or a subject outside the institution's jurisdiction.

Non-intervention or suspended intervention: This category includes requests for information concerning a ministry or organization under the Québec Ombudsman's jurisdiction, requests for intervention where intervention is interrupted at the citizen's request and requests wherein the Québec Ombudsman rejects or suspends intervention after realizing

that, due to one or another disposition of its enabling legislation, the institution does not have the right to intervene even if the request pertains to the action or omission of an organization under its jurisdiction.

Referred request for intervention: A request for intervention regarding a ministry or organization under the Québec Ombudsman's jurisdiction where it advised citizens to submit their complaints first to the organization in question or to the organization's complaints bureau.

Completed intervention: An intervention with a ministry or organization under the Québec Ombudsman's jurisdiction whereby it determines that a citizen was prejudiced or not either by an action or an omission on the part of a ministry or public organization.

2002-2003 Statistical Summary

The 2002-2003 year began on April 1, 2002 with an inventory of 1,427 active files (including files initiated by the Québec Ombudsman). Throughout the year, the Québec Ombudsman received 21,763 similar requests (including 109 files initiated by the Québec Ombudsman). Of the 10,552 requests deemed to fall under its jurisdiction, 497 constituted re-opened files.

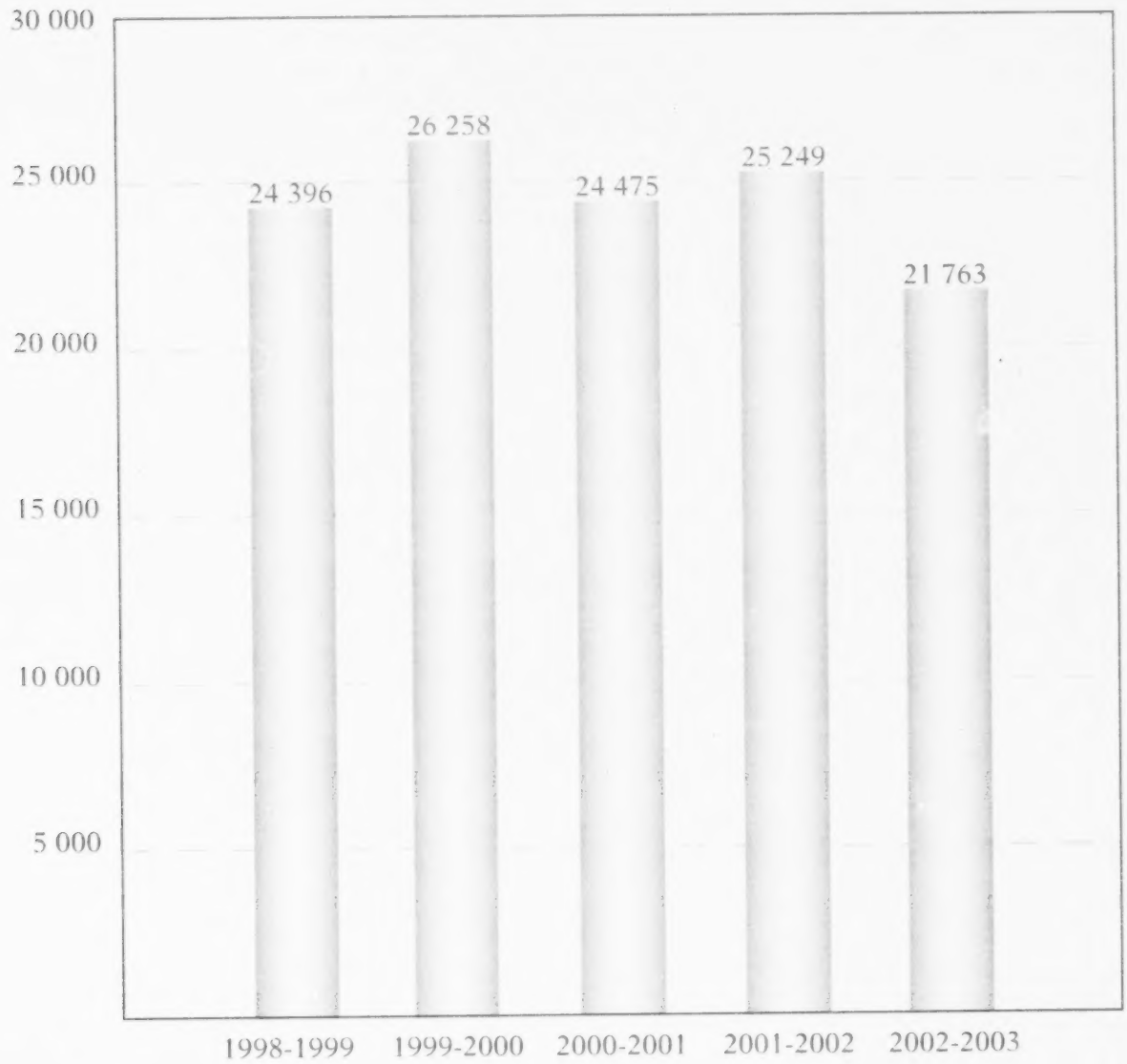
During the year, the Québec Ombudsman processed 21,860 requests, 898 of which were re-closed files. A total of 11,446 requests were related to organizations outside the Québec Ombudsman's jurisdiction, while 10,414 were deemed to fall under its jurisdiction.

At the end of the year, the inventory included 1,330 re-opened files and active requests.

During the year, 169 files initiated by the Québec Ombudsman were closed, 120 of which were interventions with general repercussions.

Figure 1

EVOLUTION OF REQUESTS[1] SINCE 1998-1999



1. All of the requests received and all the files produced under the Québec Ombudsman's initiative.

Table 1

ORIGIN OF REQUESTS RECEIVED AND FILES REOPENED[1] IN 2002-2003

Region	Population[2]		2002-2003	
	n	%	n	%
(01) Bas-Saint-Laurent	203 585	2,7	292	2,8
(02) Saguenay – Lac-Saint-Jean	284 588	3,8	319	3,0
(03) Capitale Region (Québec City)	648 466	8,7	1 781	16,9
(04) Mauricie	261 455	3,5	470	4,4
(05) Eastern Townships (Estrie)	291 928	3,9	356	3,4
(06) Montréal	1 840 093	24,8	3 096	29,3
(07) Outaouais	323 448	4,4	403	3,8
(08) Abitibi-Témiscamingue	150 382	2,0	208	2,0
(09) Côte-Nord	101 093	1,4	177	1,7
(10) Northern Québec	39 520	0,5	22	0,2
(11) Gaspésie – Îles-de-la-Madeleine	99 886	1,3	90	0,9
(12) Chaudière-Appalaches	391 605	5,3	376	3,6
(13) Laval	355 770	4,8	263	2,5
(14) Lanaudière	400 317	5,4	311	2,9
(15) Laurentides (Laurentians)	477 116	6,4	840	8,0
(16) Montérégie	1 325 921	17,9	1 184	11,2
(17) Central Québec	222 559	3,0	158	1,5
Out-of-Province	...	...	78	0,7
Unknown	...	...	128	1,2
Total	**7 417 732**		**10 552**	

1. Valid requests received and files re-opened during the year.
2. Source: *Statistics Canada. Population estimates*. Population estimates for Quebec's administrative regions as of July 1, 2001.

Table 2

DEPARTMENTS AND AGENCIES[1] MOST OFTEN TARGETED BY REQUESTS RECEIVED AND FILES RE-OPENED[2] IN 2002-2003[3]

	n
Ministère de la Sécurité publique	3 262
Ministère de l'Emploi et de la Solidarité	1 776
Ministère du Revenu	1 134
Commission de la santé et de la sécurité du travail	887
Société de l'assurance automobile du Québec	835
Ministère de l'Éducation	369
Régie de l'assurance maladie du Québec	315
Régie des rentes du Québec	305
Curateur public	250
Régie du logement	160
Ministère des Relations avec les citoyens et de l'Immigration	136
Ministère de la Justice	124
Commission des lésions professionnelles	90
Ministère de l'Environnement	70
Commission administrative des régimes de retraite et d'assurances	68
Tribunal administratif du Québec	66
Commission des normes du travail	62

1. Departments and agencies in effect on April 1, 2002.
2. Requests received and files re-opened during the year.
3. Departments and agencies for which more than 50 total requests or file reviews were received in 2002-2003.

Table 3

INELIGIBLE REQUESTS BY SECTORS IN 2002-2003[1]

	n	%
Government organizations not under the jurisdiction of the Québec Ombudsman	1 502	13,1
School system	100	0,9
Health and social services network	791	6,9
Municipalities	429	3,8
Child care system	15	0,1
Federal departments and agencies, and those of other provinces	905	7,9
Private sector	7 658	66,9
Others	46	0,4
Total	**11 446**	

1. Ineligible requests and final closure of ineligible files during the year.

Table 4

INFORMATION, REFERRALS, WITHDRAWALS, REJECTED AND SUSPENDED INTERVENTIONS IN 2002-2003[1]

	n	%
Requests for information	869	17,1
Referred requests for intervention	1 348	26,4
Requests for intervention withdrawn by citizens	246	4,8
Rejected or suspended requests for intervention	2 635	51,7
Total	**5 098**	

1. Requests for the Québec Ombudsman's intervention and final closure of files during the year.

Table 5

REQUESTS PROCESSED AND RE-CLOSURE OF FILES IN 2002-2003 BROKEN DOWN BY DEPARTMENTS AND AGENCIES[1]

	Unsubstantiated Complaints	Substantiated Complaints	Other[2] Requests	Total
DEPARTMENTS				
Assemblée nationale	-	-	11	11
Conseil du trésor (Secrétariat du)	16	2	20	38
Ministère de l'Agriculture, des Pêcheries et de l'Alimentation	8	-	4	12
Ministère de l'Éducation	158	55	128	341
Ministère de l'Emploi et de la Solidarité	687	95	1 002	1 784
Ministère de l'Environnement	18	4	37	59
Ministère de l'Industrie et du Commerce	1	1	10	12
Ministère de la Culture et des Communications	1	2	7	10
Ministère de la Famille et de l'Enfance	12	11	14	37
Ministère de la Justice	38	4	82	124
Ministère de la Recherche, de la Science et de la Technologie	1	-	1	2
Ministère de la Santé et des Services sociaux	13	8	22	43
Ministère de la Sécurité publique	1 120	513	1 576	3 209
Ministère des Affaires municipales et de la Métropole	18	1	2	21
Ministère des Finances	4	3	11	18
Ministère des Régions	3	-	-	3
Ministère des Relations avec les citoyens et de l'Immigration	38	41	54	133
Ministère des Relations internationales	-	-	2	2
Ministère des Ressources naturelles	13	3	18	34
Ministère des Transports	7	3	29	39
Ministère du Conseil exécutif	9	-	15	24
Ministère du Revenu	469	182	461	1 112
Ministère du Travail	3	-	13	16
COMMITTEES				
Comité de déontologie policière	1	-	1	2

REQUESTS PROCESSED AND RE-CLOSURE OF FILES IN 2002-2003 BROKEN DOWN BY DEPARTMENTS AND AGENCIES[1]

	Unsubstantiated Complaints	Substantiated Complaints	Other[2] Requests	Total
COMMISSIONERS				
Commissaire à la déontologie policière	14	1	17	32
BOARDS (COMMISSIONS)				
Commission administrative des régimes de retraite et d'assurances	28	23	22	73
Commission d'accès à l'information	17	1	21	39
Commission de la fonction publique	2	-	10	12
Commission de la santé et de la sécurité du travail	249	116	516	881
Commission de la protection de la langue française	-	-	1	1
Commission de protection du territoire agricole	3	-	15	18
Commission des lésions professionnelles	2	7	75	84
Commission des libérations conditionnelles	5	2	15	22
Commission des normes du travail	28	2	28	58
Commission des relations du travail	1	-	-	1
Commission des transports du Québec	-	-	2	2
Commission des valeurs mobilières du Québec	3	1	3	7
Commission municipale du Québec	-	-	2	2
COUNCILS				
Conseil consultatif du travail et de la main-d'oeuvre	-	-	1	1
Conseil de la justice administrative	1	-	1	2
Conseil de la magistrature	1	-	-	1
INSTITUTIONS				
Public Curator	138	53	59	250
Inspecteur général des institutions financières	8	6	9	23
Institut du tourisme et d'hôtellerie du Québec	-	1	-	1

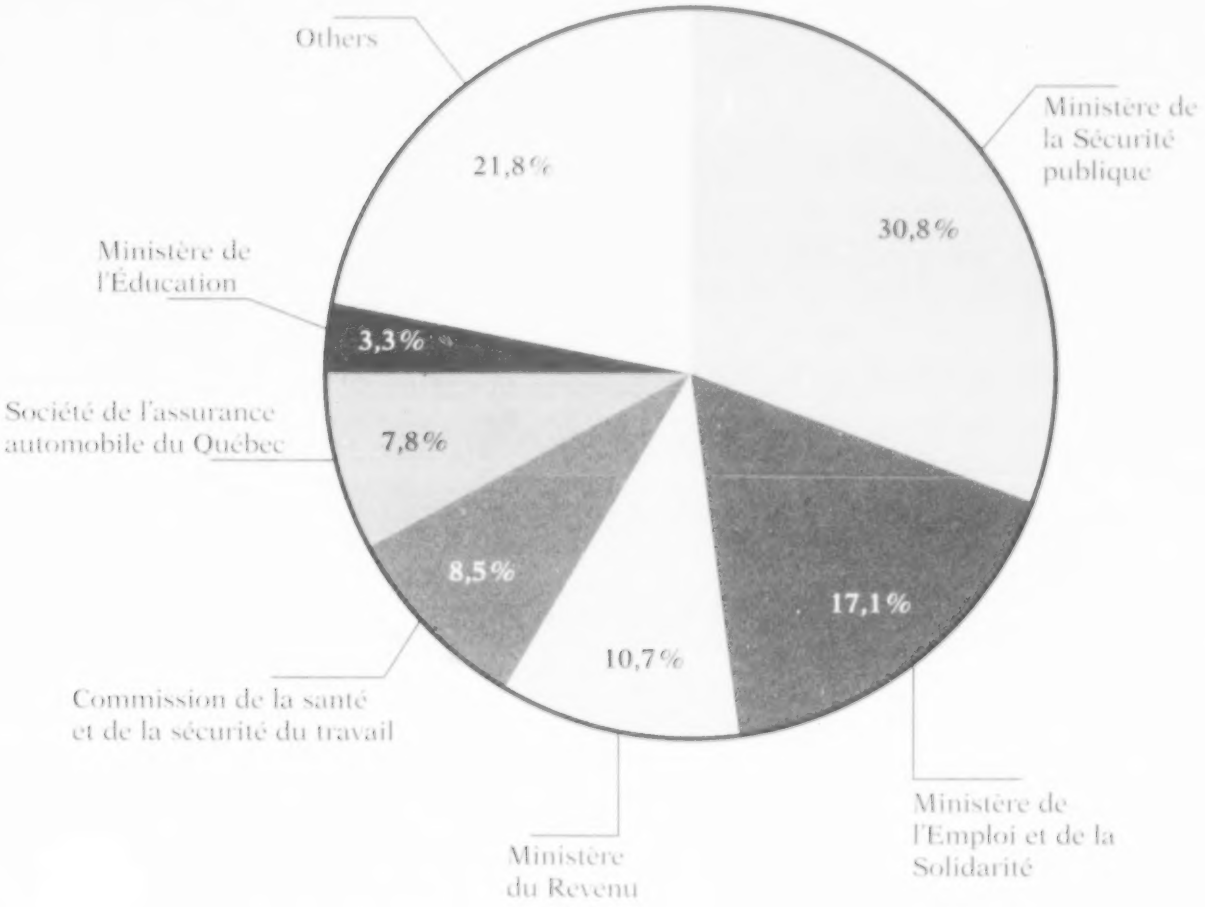
REQUESTS PROCESSED AND RE-CLOSURE OF FILES IN 2002-2003 BROKEN DOWN BY DEPARTMENTS AND AGENCIES[1]

	Unsubstantiated Complaints	Substantiated Complaints	Other[2] Requests	Total
OFFICES (OFFICES)				
Office québécois de la langue française	-	-	12	12
Office de la protection du consommateur	8	8	22	38
Office des personnes handicapées du Québec	2	-	1	3
Office des professions du Québec	2	2	2	6
BOARDS (RÉGIES)				
Régie de l'assurance maladie du Québec	139	66	84	289
Régie des alcools, des courses et des jeux	6	2	5	13
Régie des marchés agricoles et alimentaires du Québec	1	-	1	2
Régie des rentes du Québec	160	20	139	319
Régie du bâtiment du Québec	11	1	13	25
Régie du logement	26	9	121	156
CORPORATIONS				
La Financière agricole du Québec	6	-	4	10
Société d'habitation du Québec	21	1	25	47
Société de l'assurance automobile du Québec	341	183	290	814
Société de la faune et des parcs du Québec	5	1	10	16
TRIBUNALS				
Tribunal administratif du Québec	15	1	50	66
Tribunal des droits de la personne	-	-	1	1
Tribunal du travail	-	-	1	1
Total	**3 881**	**1 435**	**5 098**	**10 414**

1. Departments and agencies in effect on April 1, 2002.
2. Requests for information, referred requests for intervention, intervention requests withdrawn by the citizen, rejected and suspended interventions.

Figure 2

REQUESTS PROCESSED[1] IN 2002-2003 BROKEN DOWN BY PRINCIPAL DEPARTMENTS AND AGENCIES



1. Requests involving the Québec Ombudsman's jurisdiction and re-closing of files.

Table 6

SUBSTANTIATED COMPLAINTS IN 2002-2003[1]

Departments and agencies[2]	Completed interventions n	Substantiated complaints n	Rate of substatiated complaints %
Ministère des Relations avec les citoyens et de l'Immigration	79	41	51,9
Ministère de la Famille et de l'Enfance	23	11	47,8
Commission administrative des régimes de retraite et d'assurances	51	23	45,1
Ministère de la Santé et des Services sociaux	21	8	38,1
Société de l'assurance automobile du Québec	524	183	34,9
Régie de l'assurance maladie du Québec	205	66	32,2
Commission de la santé et de la sécurité du travail	365	116	31,8
Ministère de la Sécurité publique	1 633	513	31,4
Ministère du Revenu	651	182	28,0
Curateur public	191	53	27,8
Ministère de l'Éducation	213	55	25,8
Régie du logement	35	9	25,7
Ministère de l'Environnement	22	4	18,2
Ministère de l'Emploi et de la Solidarité	782	95	12,2
Régie des rentes du Québec	180	20	11,1
Ministère de la Justice	42	4	9,5
Commission des normes du travail	30	2	6,7
Société d'habitation du Québec	22	1	4,6

1. Department and agencies with more than 20 total interventions and final file closures in 2002-2003.
2. Departments and agencies in effect on April 1, 2002.

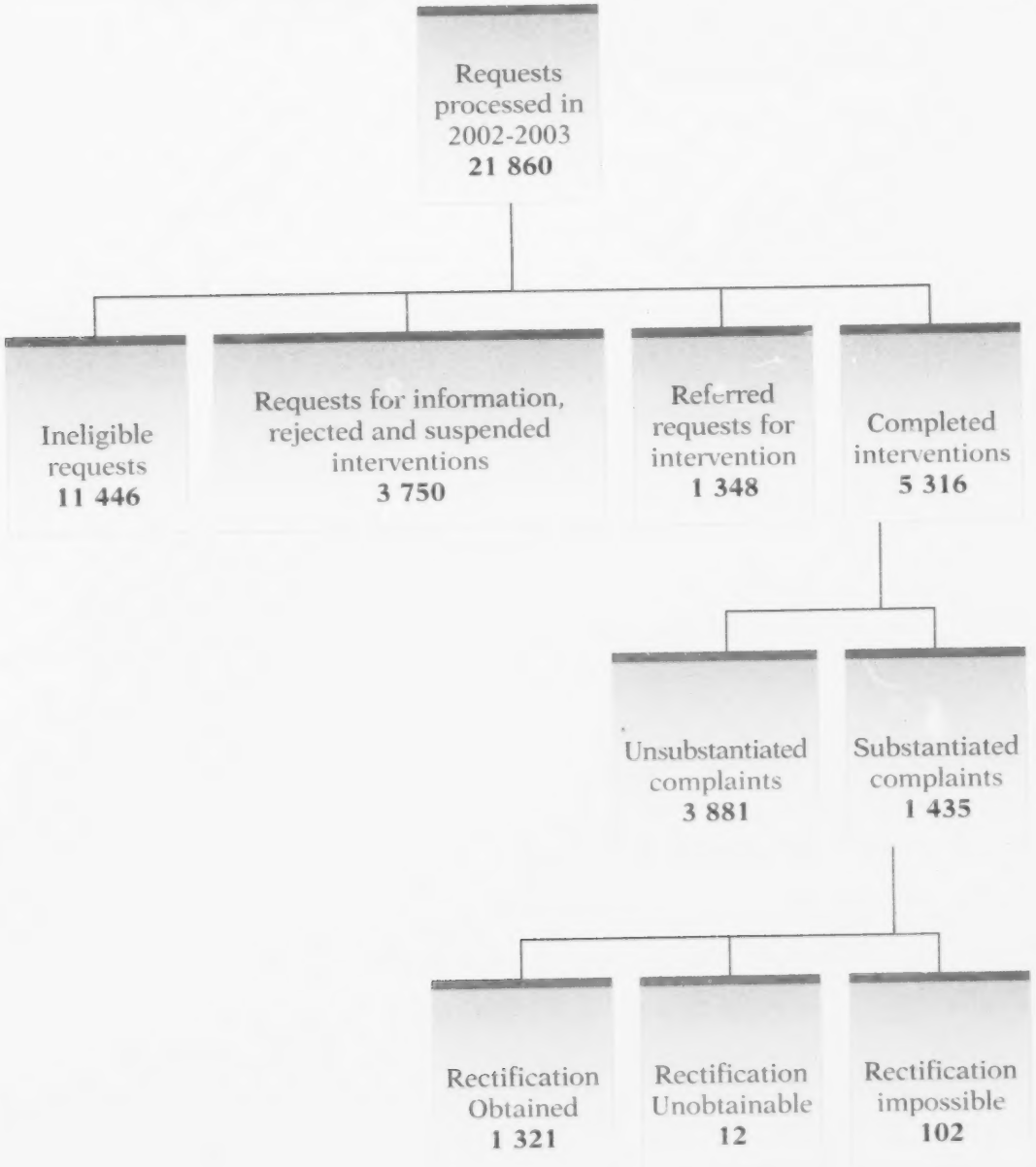
Table 7

CAUSES OF INJURY IN 2002-2003

	n	%
Unreasonable or unfair action	268	18,7
Action not in compliance with laws, regulations and guidelines	146	10,2
Reprehensible behaviour and attitude	24	1,7
Lengthy delay	360	25,0
Factual error	88	6,1
Inaccessible service	145	10,1
Inconsistency	15	1,1
Deficient information	107	7,5
Negligence and failure to act	272	18,9
Other	10	0,7
Total	**1 435**	

Figure 3

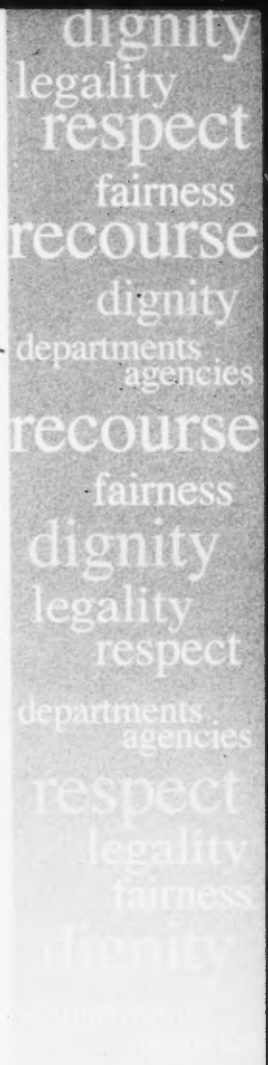
REQUESTS PROCESSED AND FINAL CLOSURE OF FILES IN 2002-2003 : RESULTS



As Québec Ombudman, I hereby confirm, at the best of my knowledge, that the administrative data included here in are correct.

The Québec Ombudsman,

Pauline Champoux-Lesage


dignity
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fairness
dignity

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